

To His Excellency, General Sir Reginald Alexander Dallas Brooks,
Knight Commander of the most Honourable Order of the Bath, Knight
Commander of the most Distinguished Order of Saint Michael and Saint
George, Knight Commander of the Royal Victorian Order, Companion of
the Distinguished Service Order, Knight of the Venerable Order of
St. John of Jerusalem, Governor of the State of Victoria in the
Commonwealth of Australia -

May it Please your Excellency,

In accordance with the Order-in-Council dated the 26th July, 1961
(a copy whereof appears in Appendix I hereto)

I, OLIVER JAMES GILLARD, Q.C. the person constituted and appointed
as a Board to inquire therein have the honour to present my report
upon and to make recommendations concerning the management development
improvement and means of financing the management development and
improvement of the area reserved and known as Albert Park.

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ALBERT PARK: TIGHTER GOVT. REIN SOON

REGULATIONS for tighter control over the development of Albert Park would be gazetted before the end of February, the Minister for Lands, Mr Turnbull, said yesterday.

He said that Cabinet had acted on the recommendations of Mr O. J. Gillard, QC, who held an inquiry into the park last year.

Mr Turnbull said the new regulations would provide that the Albert Park committee of management must get the written approval of the Board of Land and Works

before erecting buildings or enclosing substantial areas of the park.

And, in line with Mr Gillard's recommendations, the Government would first seek the Town and Country Planning Board's opinion before approving any changes.

The Government would also provide that the committee should display, at a suitable place for public inspection, a statement of its receipts and expenditure for the latest year.

The State Parliamentary LCP is likely to approve soon the handing over of a strip of Yarra Park to the MCG trustees for grandstand extensions to the Melbourne Cricket Ground.

This means that the Government will legislate in the autumn session of Parliament, opening on March 6, to give effect to the City Council's decision to grant the MCG trustees' application to take over the parkland strip.

The Parliamentary LCP will make its decision during February.

1. INTRODUCTION.

Preliminary

1.1. In accordance with the abovementioned Order-in-Council dated 26th July 1961, after an extensive inquiry made therein the following report is submitted by the Board of Inquiry constituted and appointed by the said order, to His Excellency the Governor of the State of Victoria on the management, development, improvement and the means of financing the same of the area reserved and known as Albert Park (hereinafter referred to as "the Park").

Representation of parties

1.2. Proceedings in such inquiry were commenced on the 1st August 1961 and the hearing of evidence and addresses was concluded on the 4th October 1961. A number of parties through counsel sought and were granted leave to appear in the proceedings. Mr. A. E. Woodward (instructed by the State Crown Solicitor) appeared to assist the Board of Inquiry. Mr. J. M. Cullity (instructed by R. H. Dunn) appeared for the present Committee of Management of the Park; Mr. C. G. Hooper of the firm of Best, Hooper, Rintoul and Shallard, Solicitors appeared for the Melbourne and Metropolitan Board of Works; Mr. F. Galbally and Mr. J. Bryson appeared for the Council of Progress Associations of Victoria, the Victorian Model Aeronautical Association, and the South Melbourne Amateur Cycling Club; Mr. T. A. Molomby of the firm of Molomby and Molomby, Solicitors, appeared for the Victorian Amateur Soccer Association, Mr. C. G. Nikakis (instructed by Irving Plotkin) appeared for the Juventus and George Cross Soccer Clubs; Mr. J. C. Lowry of the firm of Home, Wilkinson and Lowry, Solicitors, appeared for the Victorian Rugby Union and Mr. A. J. Southwell (instructed by Pavey, Wilson, Cohen and Carter) appeared for the Light Car Club of Australia.

Other appearances

1.3. A number of bodies unrepresented by a legal practitioner also sought and were granted leave to place submissions before the Board. THE DEMOCRATIC LABOUR PARTY through Mr. A. J. Jones, the President of the Middle Park Branch and a member of

ALBERT PARK: GOVT. RE.

INVESTIGATIONS IN LIGHT OF THE REPORT OF ALBERT PARK...

the Executive of the party, presented written submissions¹ and gave evidence in support thereof.² THE CHILDREN'S COURTS MAGISTRATES ASSOCIATION through its president, Mr. A. J. Blashki, also gave evidence.³ THE LANDSCAPE PRESERVATION COUNCIL, a section of the National Trust, also presented submissions in writing⁴ and gave evidence through its president, Dr. J. McAndrew.⁵ Representatives of the Albert Park Yacht Club,⁶ Albert Sailing Club,⁷ and the Victorian Amateur Football Association⁸ gave evidence.

Secretary
the
Board

1.4. Mr. C. E. Slade, an officer of the Department of Lands was appointed to act as Secretary to the Board.

Record of
evidence

1.5. Oral Evidence was given by 49 witnesses whose names appear in Appendix II hereto on the dates set out therein and a record of such evidence was taken down in shorthand and transcribed by members of the Government Shorthand Writers' Office; the transcript⁹ of such evidence is annexed hereto and forms part of this report. During the course of the proceedings, a number of documents, a list whereof appears in Appendix III hereto, was produced and marked as exhibits.¹⁰ Copies thereof are annexed hereto to form part of this report.

Specimens

1.6. An exhaustive inspection was made of the Park on Friday, the 11th August 1961, and on the evening of Friday, the 15th September 1961, an inspection was made of the Table Tennis Centre, Badminton Centre and Basket Ball Centre in order to observe the nature of and the discipline exercised in the activities carried on therein, the organization of the various associations and the number and type of persons

1. E.69 (Note: "E" throughout the report means an exhibit tendered in evidence and annexed hereto). 2. T.1297 et.seq. (Note: "T" throughout the report means the transcript of evidence taken in the proceedings and annexed hereto).
 3. T.1416 et.seq. 4. E.58. 5. T.1496 et.seq. 6. T.1767 et.seq. 7. T.1800 et.seq. 8. T.1818 et. seq.
 9. See note 2 supra.
 10. See note 1 supra.

who took part in such activities. At other times, during the course of the hearing, particularly at traffic peak hours, further observations were made by the Board of the Traffic making use of the roadways in the park.

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1.7. Before dealing with the precise terms of reference, a short history of the park will be traced, an analysis of the relevant legal considerations will be made and an examination of practical considerations in relation thereto will also be carried out.

2. HISTORY OF THE PARK.

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2.1. In its natural state, the area where the Park is now situated was a low lying piece of land, marshy in parts and separated from Port Phillip Bay by a low mound of loose sand and a salt lagoon. In the centre of the area of the Park was another salt lagoon, its surface being some short height above low water mark. Having at some prior time apparently been submerged by the sea, the soil in the Park, particularly around the salt lagoon therein, was quite saline, thereby affecting the growth and dictating the nature of trees and shrubbery to be grown in the area.

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2.2. Shortly after the settlement of Melbourne, the adjacent local governing bodies, including the Corporation of Melbourne, evinced an interest in the area for development as a possible park.

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2.3. By an Order-in-Council dated 22nd July 1862, an area of some 951 acres of Crown land was temporarily reserved¹¹ from sale under the provisions of Section II SALE OF CROWN LANDS ACT 1860. This area was known as South Park and was bound on the east by St. Kilda Road, on the south by Fitzroy Street, on the west, in the then Borough of St. Kilda, by Park Street and in the then Borough of Emerald Hill (South Melbourne), by the St. Kilda-Melbourne Railway line, and on the north by Albert Road. By the Order-in-Council the area

11. See Government Gazette 1862 pp. 1338, 1360, 1393, 1436.

was renamed Albert Park (undoubtedly in honour of Queen Victoria's Prince Consort) and was reserved as a park to which the public were to be admitted subject to such rules and regulations as might be made by the Board of Land and Works.

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rve. 2.4. Pursuant to Section 8 of the LAND ACT 1862, notification was published in 1864 in the Government Gazette¹² that pursuant to an Order-in-Council dated 1st February 1864, it was the intention of the Governor-in-Council to permanently reserve from sale 21 acres 2 roods 17 perches of Albert Park on the south side near the St. Kilda Railway Station and to vest the same in the Council of the Borough of St. Kilda. About this period, apparently a number of alpaca had been imported from South America and it was the intention to keep them in this reserve at St. Kilda. This area, therefore, became known as the Alpaca Reserve.

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Park. 2.5. Again in 1864, a further notification was published in the Government Gazette¹³ that pursuant to an Order-in-Council, dated 22nd February 1864, it was the intention of the Governor-in-Council to permanently reserve from sale a portion of Albert Park containing 724 acres more or less for a park. The area thus reserved was the land on the east side of the railway line extending to St. Kilda Road on the east, Fitzroy Street on the south, and Albert Road on the north, less the area referred to in the last preceding paragraph and then known as Alpaca Reserve.

2.6. Despite a statement in the official history of the City of St. Kilda that these reserves were shown in a government document published in 1871 as having been permanently reserved from sale, a search of Government Gazettes of that period do not show that the intention to reserve permanently the two areas set out above was ever

12. Government Gazette 1864 pp. 367, 399, 440, 470, 506, 541, 571, 604.

13. Government Gazette 1864 pp. 604, 633, 675, 713, 743, 769, 789, 807, 837.

consummated. Search of the files in the Lands Department also does not disclose that any permanent reservation was made at this period, although notice of intention to do so had been given so often over a long period.

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2.7. On the 19th April 1875, the temporary reservation made in 1862 pursuant to the Order-in-Council, dated 22nd July, 1862, was revoked^{13A} and on the 14th April 1875, subdivided allotments fronting St. Kilda Road and Queen's Road were sold by the Crown. It was also advertised that the frontages to Fitzroy Street were to be sold on the 26th May 1875, but through pressure of local protests, this sale was abandoned.

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2.8. On the 5th March 1875, notification was given in the Government Gazette¹⁴ of intention pursuant to Order of 1st March 1875, to permanently reserve from sale 540 acres more or less of Albert Park. The area by its description extended from the railway line east to what is now known as Queen's Rd. Further notification was given in the Government Gazette on the 11th June 1875 by an Order dated 11th June 1875 that the same area was about to be permanently reserved.^{14A} Despite these notifications there was no permanent reservation pursuant to this notice at this period.

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2.9. In the Government Gazette,¹⁵ on 21st January 1876, notification was given that it was the intention of the Governor-in-Council pursuant to order dated 17th January 1876, to reserve from sale, permanently "570 acres more or less, County of Bourke, Town of Emerald Hill and Municipal district of St. Kilda; Commencing at a point on the southern side of Albert Road where it is intersected by the eastern side of the Melbourne and Hobson's Bay United Railway; bounded thence by that road bearing north easterly at a point bearing S.65°

13A. Notice of intention to revoke appeared in Government Gazette 1875 pp.561, 606, 642, 725. Notice of Revocation pursuant to order dated 19th April 1875 appeared in Government Gazette 1875 p. 796.

14. Government Gazette 1875 pp. 412, 515, 561.

14A. Government Gazette 1875 pp. 1155, 1184, 1231.

15. Government Gazette 1876 pp. 96, 178, 222, 284.

31' E, from the eastern angle of Sec. 57 Emerald Hill, thence by a road bearing south-easterly to Queen's Terrace; thence by that terrace bearing southerly and south-easterly to Brighton Road; thence by that road bearing southerly to Fitzroy Street; thence by that street bearing south-westerly to the terminus of the aforesaid railway; and thence by the aforesaid railway bearing north-westerly to the point of commencement". Save for certain statutory excisions referred to hereafter, this area thus defined is the present area of Albert Park. It should be noted that although the notification stated that the purpose of this reservation would be set out in the notification, in fact no such purpose was stated.

permanent
reservation
of
Park.

2.10. On the 24th March 1876,¹⁶ a further notification was published by the Commissioner of Crown Lands and Survey in the Government Gazette stating that in pursuance of the provisions of the LAND ACT 1869 and in fulfilment of the intention duly notified, the Governor with the advice of the Executive Council had reserved from sale permanently, pursuant to order dated 21st March 1876, "Albert Park being 570 acres more or less as a site for a public park".

statutory
excisions
in Park.

2.11. By various Acts,¹⁷ Parliament has authorised the following excisions from the Park, viz:

- (a) In 1878, a little less than 2 acres on the south-west corner was excised for a State School at St. Kilda;
- (b) In 1915, $\frac{1}{2}$ acre on the north-west corner was excised for a technical School at South Melbourne;
- (c) In 1917, $2\frac{1}{2}$ acres on the north side of the lake near the South Melbourne Cricket Ground was excised for Defence purposes;
- (d) In 1920, an easement of way over the carriage way on the north side to such last mentioned area was granted to the Commonwealth;

16. Government Gazette 1876 p. 568

17. Acts numbered 632, 2587, 2923, 3079, 4127, 5593.

- (e) In 1933, $1\frac{1}{2}$ acres on the north-east corner was excised for the Macpherson Girls' High School;
- (f) In 1951, a further $\frac{1}{2}$ acre on the north-west corner was excised for the extension to the South Melbourne Technical School.

As a result of these excisions there is now approximately 563 acres in the Park, including the lake.

2.12. As early as 19th April 1855, the St.Kilda Cricket Club had requested the Surveyor-General for occupancy of about eight acres on the southern edge of the Park for its use as a cricket ground "upon the understanding that should the Government be desirous again to enter upon possession, the Club undertake to remove any fencing, etc. it may have found necessary to erect". On 19th August 1856, authority was given "to enter in possession" of an area defined by the parties. Apparently dissatisfied with the area so defined, the Club sought an alternative therefor, and on 12th March, 1857, permission was given to select another portion of ground on the basis that it might be resumed by the Government at any time. At that period, the fence enclosing the park was north of Fitzroy Street. The area chosen by the Cricket Club was south of such boundary fence, but north of Fitzroy Street. The Club erected a post and rail fence around the cricket ground. When it was proposed in 1875, to sell the allotments facing St.Kilda Road and Fitzroy Street, the proposed subdivision covered a portion of the area occupied by the St.Kilda Club, and indeed, it was proposed to build a road right through the centre of the playing field. The sale of allotments along Fitzroy Street, as already pointed out, was not proceeded with and the subdivision of the area of the cricket ground was abandoned. The ground was within the area then reserved permanently as Albert Park, and permissive occupancy thereof was given to the Cricket Club. Later in 1884, permission was given by the Lands Department to enclose the ground,

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with a picket fence subject to the public having free access thereto. Save when the ground is closed at the present day to the public under existing regulations for football and cricket matches, the outer gates of the cricket ground are left open apparently to observe the terms of the abovementioned condition. Since 1884, of course, great developmental work has gone on at the Cricket Ground and today there are many buildings in this area which is now surrounded by a high brick fence. Furthermore, the cricket club has obtained a club licence under the provisions of the Licensing Act 1958 with respect to a portion of the area within the Cricket Club enclosure, with all the consequences of privilege to some and non-access to the general public in respect of such area so licensed.

2.13. Having the St. Kilda ground as an example, it was not surprising that on the 10th February 1862 a request was made by the South Melbourne Cricket Club to reserve a portion of South Park for the purpose of a cricket ground for the Club. On the 20th February 1862, the Board of Land and Works approved of the Club being allowed permissive occupancy of a certain portion of ground, containing 6 acres 1 rood 17 perches, subject to the condition that the ground was to be at once vacated and fencing removed without any compensation to the Club if it be deemed by the Board of Land and Works necessary to adopt that course in carrying out improvements in the South Park. In February 1869, a request was made by the Club for an extension of the ground on the south-east about 4 chains, and on the 24th February 1869, such extension was granted, subject to the public having unrestricted access to the grounds for the purpose of promenade. On 29th October 1869, permission was sought to make a charge for admission on special occasions and on 12th November 1869, permission was given by the Board of Land and Works on the distinct understanding that the money so obtained "be entirely expended on the improvement of the Ground". It was not until 1873 that

the extensions to the ground were carried out.

2.14. In 1907, an application to extend further the area of the ground was made and on 12th July 1907, with the consent of the then Trustees of the Park, namely the South Melbourne and St. Kilda Municipal Councils and the Board of Land and Works, the then Committee of Management of the Park granted permission to use the further area in connection with the South Melbourne Cricket Ground, subject to the conditions contained therein. The main condition was that the occupancy was to be permissive and only to the end of the current year; if required for a further term, application was to be made therefor at the end of the year and so on for every year for which it may be conceded, but such permissive occupancy might be revoked at any time by the Committee of Management.

2.15. As a result of a ruling given by the Secretary for Lands with respect to the St. Kilda Bowling Club, in 1960¹⁸ the Chairman on behalf of the present Committee of Management entered into an agreement with the President of the South Melbourne Cricket Club on behalf of the officers and members of that Club, granting occupancy of the South Melbourne Cricket Ground for a period of 25 years.

2.16. The South Melbourne Cricket Ground has similarly developed to the St. Kilda Cricket Ground. The South Melbourne Cricket Club has also obtained a club licence under the Licensing Act in respect of a portion of its enclosed area.¹⁹

2.17. On 8th June 1865, an application was made by a provisional Committee of the St. Kilda Bowling Club to the Board of Land and Works for a portion of the then Alpaca Reserve as a bowling green. At the time, the Reserve had been placed under the control of the St. Kilda Borough Council and the Board of Land and Works expressed its willingness to such use

18. E.83 T.251 See para. 2.20 infra.

19. The restrictions imposed on access by the public in general are imposed by Secs. 241, 242(1)(c) Licensing Act 1958.

if the Borough Council concurred in such order. Such consent was expressed to be on condition that no trees on the area were to be cut. On the 22nd June 1865, the St. Kilda Council approved of the use by the St. Kilda Bowling Club.

Development
of St.
Kilda
Bowling
Club.

2.18. Since that period, St. Kilda Bowling Club has been in occupation of the area of 1 acre 1 rood 23.2/10 perches, having a frontage of 208' to Fitzroy Street and has made a number of improvements on the area. It has also obtained a Club licence under the provisions of the Licensing Act.

Private
use of
area.

2.19. In July, 1955, an application was made by the Club to allow Caltex Company to use portion of the abovementioned area as a passage-way in to the service station in Fitzroy Street in return for the use and occupation of a substantial area at the rear of the Caltex Station for a bowling green. On the 16th September 1955, the Secretary for Lands notified the Club the Department had no objection to the Club making the arrangements with Caltex.

Ruling on
Extended
Occupation.

2.20. In October 1959, permission was sought and obtained from the Department of Lands by the St. Kilda Bowling Club for permission for the Committee of Management of the Park and the Club to enter into "an occupancy agreement for an extended term"²⁰. Such an agreement was then entered into by²¹ the Committee and the Bowling Club.

Effects of
Enclosures.

2.21. The facts set out above with respect to the St. Kilda and South Melbourne Cricket Grounds and the St. Kilda Bowling Club are important to shew:

- (1) At the date of the permanent reservation of the Park as "a site for a public park", there were three areas in the Park, which were enclosed by fences which must have prevented ready access by the public into the areas occupied by the sporting bodies;
- (2) Originally, emphasis was laid on the nature of the

20. E.83 T.250-51. For one effect thereof, see para. 2.15 supra.

21. E.33, T.377-8, T.1142.

occupancy as being permissive only and in some cases, the condition of access by the public was clearly expressed;

- (3) It is only in comparatively recent times that it was accepted as a matter of "common sense"²² that the Committee of Management could give an occupancy for a period of time to any of the established sporting bodies;
- (4) No real attention was paid in such event to the forensic difficulties of enforcing agreements with or by unincorporated Associations and to discover who were bound thereby;
- (5) The public from an early period must have been denied access to some portions of the enclosures of such sporting bodies, in particular, to those portions in which personal property was kept and at periods when organized sport was being conducted;
- (6) It was and would have been difficult for a Committee of Management of the Park coming into existence after these bodies were well established, to exercise any close control over the activities of any of the sporting bodies within its own enclosed area;
- (7) There were comparatively small sections of the public who could enjoy the privileges attached to such enclosed areas, albeit such sections of the public developed and improved such areas for their own enjoyment; the rentals of the bare grounds having regard to the unimproved values thereof were merely nominal.²³

Middle Park 2.22. On the 11th August 1903, permission was given to the Middle Park Bowling Club by the Commissioner of Lands and Survey to enclose a portion of the Park as a bowling green, a tennis court and quoits ground, subject to the condition that this occupancy was permissive only and the

22. T.1142.

23. See para. 4.8 infra. T.250-252. E.50.

right of the public to enter at all times was preserved. Like other clubs, the members of the Middle Park Bowling Club developed and improved their area and later obtained a Club licence under the Licensing Act.

Improvement 2.23. In 1873, contractors to the Board of Land and Works carried out extensive works on the lagoon in the Park. Over 100,000 yards of material was excavated from the lagoon in order to deepen it and from the spoil thus produced, the banks were built up and ornamental islands were constructed in the lake. Provision was subsequently made in 1890 for the erecting of a pumping station on the Yarra River above Dight's Falls and for connecting the Pumping Station by pipeline to feed the lagoon with fresh water. Precautions were taken, first, to prevent sewage flowing into the lake from nearby residential areas, and secondly, to regulate the flow of stormwater drainage into it.

2.24. It is worthy of notice that on the 15th February 1875, one Nathaniel Munro, an officer of the Crown Lands office, reported - "Two of the boathouses are all but complete ... they only require some painting and ornamental work..... The third licensee ... has not yet commenced to build. The Albert Park Yacht Club have called for tenders for ornamental picket fencing to enclose their site". Again it should be emphasized that these activities were occurring contemporaneously with or prior to the reservation of the area as a "public park".

2.22. At various periods of time, the system of management differed. On 5th April 1886, a Crown Grant²⁴ was issued vesting the Park in the Corporations of South Melbourne, St. Kilda and the Board of Land and Works as a "Public Park for the recreation convenience and amusement of the people".

²⁴. Crown Grant Vol.1819 Fol.363795.

These trustees delegated control of the Park to a Committee of Management consisting of representatives of the Councils and the Board of Land and Works. On the 17th December 1897, regulations were promulgated for the care protection and management^{24A} of the Park. They provided (inter alia) for the regulation and protection of the playing of cricket, football and other organized sports in the area.

2.23. In 1932, because of legal difficulties arising from own and irregular appointments made by the trustees to the Committee of Management, Parliament passed the ALBERT PARK LAND ACT 1932 (no.4078) revoking the Crown Grant and re-vesting the land in the Crown as unalienated land of the Crown. The permanent reservation made by Order-in-Council, 21st March 1876, which was recited in the Act was declared to be unaffected by the revocation of the Crown Grant. Therefore, the Park became subject to the provisions now contained in section 221 LAND ACT 1958. The Minister of Lands immediately after the passing of the Act proceeded under the section to appoint a Committee of eight, four representing the Department and two representing each of the Municipalities of St.Kilda and South Melbourne. The former municipality refused to nominate any persons for approval, and accordingly, was not represented on the Committee of Management until 1947, when it finally agreed to join. In 1933, a Committee of Management was constituted, consisting of three Government representatives²⁵ and two representatives of the South Melbourne Council.

2.24. On 31st May 1933, new regulations were gazetted, replacing those promulgated in 1897. The regulations were amended in 1936 but on 24th September 1952 they were revoked and new regulations were promulgated. These new regulations in turn were amended on the 8th August 1956 and the 4th

^{24A}. Government Gazette (1897). For earlier regulations for the Park see Government Gazette (1875) p.2370

25. For reasons set out in para. 3.1 infra, it is fallacious in law to say that the members represent any particular body. In fact, however, they are appointed on the nomination of the various bodies.

February 1959 and are those now in force. At the time of the appointment of this Board of Inquiry, the Committee of Management was seeking amendments of the regulations. The text of the regulations will be discussed with particularity under Part VI of this Report.

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2.25. On 23rd June 1947, a conference was attended by the Minister of Lands (Mr. L. W. Galvin, M.L.A.), Minister of Public Works (Mr. P. J. Kennelly, M.L.C., now Chairman of the Committee) and representatives of the Councils of St. Kilda and South Melbourne. After discussions extending over some months, it was finally arranged on 13th November 1947, that the Committee should be reconstituted to comprise four government representatives and two from each Council, the Chairman to be one of the government representatives. It was also agreed that each Council would make a grant of money to the Committee and the Government would provide a subsidy equal to the sum of the Municipal grants. In 1960, Cabinet decided to add two more government representatives, and in accordance with the spirit of the agreement made in 1947, the representation of each council was increased to three. The Committee, therefore, at the present time consists of twelve members.

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2.26. The present committee men and dates of their appointment are as follows:

| <u>GOVERNMENT REPRESENTATIVES:</u> | <u>DATE OF APPOINTMENT.</u> |
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| Senator P. J. Kennelly (Chairman since 1947) | 15th September 1943. |
| M.R. McKenzie | 9th August, 1933. |
| W. J. Cox | 22nd January 1947. |
| P.K. Sutton, M.L.A. | 17th November, 1954. |
| B. D. Snider, M.L.A. | 11th May, 1960. |
| B. Telford | 11th May, 1960. |

26. The regulations promulgated in 1897, 1933 and 1952 are set out in E.8.

27. See page 76 infra.

| <u>ST KILDA COUNCIL REPRESENTATIVES:</u> | <u>DATE OF APPOINTMENT.</u> |
|--|-----------------------------|
| Cr. J. Talbot | 19th September, 1956. |
| Cr. J. Macartney | 27th July, 1960 |
| Cr. G. H. Copeman | 21st September, 1960. |

SOUTH MELBOURNE COUNCIL REPRESENTATIVES:

| | |
|------------------|-----------------------|
| Cr. F. J. Ferry | 29th October, 1958. |
| Cr. J. Holland | 30th September, 1959. |
| Cr. J. M. Fenman | 27th July, 1960. |

The so-called Government representatives were appointed without any limitation of time or any other condition. The so called Council representatives were appointed subject to the condition that their tenure continued only so long as they remained councillors and were nominated by their respective Councils. Counsel for the Committee pressed the view that the present committee was quite representative of the community. It consists, first of three parliamentarians of different political views, secondly, of six councillors from two different municipalities in the locality, thirdly of two persons in Messrs. McKenzie and Cox who were former members of the staff of the Lands Department and who were familiar with the administration of the provisions of the Land Act covering reserves, and finally, Mr. Telford who was a local business man at St. Kilda and who has been requested by the Minister to report to him "anything of a controversial nature"²⁸. Submissions had been made by Mr. A. J. Jones²⁹ that the constitution of the Committee might be altered to give local bodies greater representation thereon. Counsel assisting the Board adequately answered these submissions when he said, "The present composition consisting as it does of six local councillors and two local members of Parliament, ensures proper representation of a local view point". He, however, submitted that the local representation may be too

28. T. 628-9

29. T.1320 et. seq. 224 et. seq.

Large and that the Committee might be broadened in the future by appointment of persons other than the sources now drawn on for such appointments. Whilst such view should not lightly be cast aside, the history and development of this reserve shows that in the past century, there have been a great number of public spirited men who, for no reward, must have used their talents and their leisure time in the service of the community, and in choosing such men, the authority responsible for being so must have exercised reasonable judgment in making the appointments, having regard to the observable results of the labours of the past. Errors of judgment were probably made throughout the hundred years, and doubtless, will continue to be made, but no evidence has been educed at the hearing or can be discovered in any departmental file, that the Committee for the time being, appointed generally on the representative basis as at present, has failed to secure adequately the interests of the local residents, or indeed, of the public in general. The history of the Park affords another example of how this community depends on the voluntary work of able and devoted men. Whilst theoretically, there could be a broader base for representation on the Committee, the results of the past really justify the choice that has been made and the system that enabled such choice. On the one hand the quality and conscientiousness of the individual, rather than whom he represents, should be the criterion of qualification of a committeeman. To this extent the submissions of Counsel assisting may be soundly based. On the other hand, those who support the Park by granting money for its maintenance, should have some voice in its management. Having regard to all these factors and the experience of the past, the history of the Park does not require that there should be any change in the method of appointment of the Committee or the representation of local

bodies thereon.³⁰

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2.26. Although during the hundred years of its existence, there has been a generally progressive development of the area, there was one activity which detracted considerably from its improvement. This activity was apparently dictated for economic reasons, which, at all times in its history, has been a potent influence in the management and development of the Park. So far as can be ascertained, in 1903, the South Melbourne City Council commenced using the western side of the area south of the Middle Park Railway Station as a general garbage tip. In order to allow this to be done effectively, sand was sold by the Committee of Management, and in the financial year ending 30th September 1939, £2,539/7/6 was received from the sale of sand. It is also interesting to note that a grant of £1,000 was made by the South Melbourne City Council and that these two sums were the major items in a total of £6,844/7/8 income received by the Committee of Management in that financial year.³¹ This activity apparently continued till 1950, and as a result, the soil on the western side of the park, being decaying garbage mainly, is still in a state of compaction, requiring large quantities of filling, the cost of which per yard is generally far greater than the price received for the sand originally.³² Although sand which was probably affected by the presence of salt, was removed from the area, it has been stated in evidence, that, owing to the present nature of the soil, great difficulty has been experienced in getting trees to grow in the "tip" area.³³ The work of reclaiming this area commenced about 1950 and continued till 1956 when it was more or less completed.³⁴ Subsidence due to delayed compaction is still, however, occurring in this area, and in consequence, filling and

30. T.932, See remarks of former Secretary that "System could not be bettered".

31. E.1. for history of "Tip" see T.110 et seq.

32. T.111

33. T.115

34. T.877.

levelling must be continuously undertaken. Where formerly there was a garbage tip, with all the objectionable features of such, being of no value whatever either for active or passive recreation by members of the public, the western area of the Park covering at least 40 acres, has now been levelled off and sown down with grasses, presenting a very pleasant place, both in appearance and for use. Portion of the area has been converted into playing ovals, surrounded by galvanized iron pipe fencing and supplied with dressing-rooms, with toilets attached, and hot and cold water laid on.

2.27 From its earliest years, the Park has been used extensively for organized sport. There were historical reasons why Senator Kennelly should depose, "I believe that Albert Park is a recreation and sporting centre".³⁵ For many years up till 1947, a golf club enjoyed the occupancy of some 100 acres of the Park.³⁶ In 1947, after six months' notice, the Committee of Management determined the club's permissive occupancy of the area and took over and now conducts the golf course as a public course. Besides the areas enclosed for the cricket clubs and bowling greens, all kinds of outdoor sport were and are conducted, both on the lake and in various areas of the Park. At different times, there were different sporting activities. As with its development, the character of the Park changed or as activities lost their appeal or became popular with sportsmen as the case may be, so the sporting activities changed. At the present time,^{36A} on the lake, there is rowing, yachting, boat speed boating and canoeing. Fishing and sailing of model boats is also allowed. On land, the park is regularly used for golf, cricket, lacrosse, hockey, baseball, soft ball, girls' basket ball, Australian Rules Football, Soccer, Rugby, Irish football, Hurling, Archery, Tennis, competitive

35. T.114. See also E 42 and 43.

36. T.274. T.471.

36A. See Appendix IV infra.

walking, athletics and the flying of model aeroplanes. In addition, the Park has at times been used for cycling, and on several occasions in the past has been used for motor car racing. In renovated buildings, provision has been made for indoor sports of basket ball, badminton and table tennis. Gymnastics are also practised in some of the buildings. This represents a total of some thirty sporting activities. At earlier periods of its history, provision was also made in the Park for horse riding and the ancient game of skittles.

2.8. During its existence, the Park has been frequently used by the Defence services, and as set out above, during World War I a portion of the reservation was excised in favour of the Commonwealth.³⁷ During World War II, under the provisions of the National Security Act, two further areas were occupied by the Commonwealth. On the northern side, some 4 acres were taken and three large stores were built thereon. On the southern side some 40 acres were taken for Offices. The northern area has been vacated by the Commonwealth and the buildings erected thereon by the Commonwealth were converted by the Committee of Management into centres for basket ball, badminton and Table tennis. In September 1960, it was estimated that each year from 95,000 to 100,000 visited the Table Tennis Centre, 100,000 were admitted to the basket ball centre whilst 70,000 visited the badminton centre. From the evidence given at the hearing and observations made on inspection, so far as the users of the centres were concerned, the centres have been very successful. A great number of young people are obtaining healthy recreation in well disciplined surroundings, not only during ordinary hours of daylight (when many would be prevented by their employment from obtaining the recreation) but in hours of darkness, thus extending considerably the period during which this area in the Park could be exploited by users for recreational purposes.

Commonwealth
Occupation.

37. See para 2.11 supra.

Furthermore, so long as the various sporting activities carried on therein continue to attract the young people, the Committee of Management may continue to receive quite a reasonable income from the sites, without burdening too greatly the organizations using the same.

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2.29 Consequential to the success of these centres, the Committee of Management is extending the indoor sporting activities. Accordingly at the beginning of this year, it commenced the erection of squash courts and these apparently will become available for use in November next. In furtherance of the same aim, on 19th June 1961, an agreement was entered into between the Committee and Bowling Centres Limited for the erection of a bowling alley.³⁸ "The driving force was to complete the sports centre unrivalled anywhere in the country anywhere in the world", said Senator Kennelly.³⁹ Work of levelling ground for the building has commenced but permission to erect the building has lately been refused by the Melbourne and Metropolitan Board of Works.⁴⁰

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2.30. From earliest times, there have been carriage-ways through the Park but because of the growth of the metropolis to the south and east, because of the density of vehicular traffic, and because of the geographical position of the Park in relation to the centre of the city, the character of the ways has altered. Where formerly they were scenic drives, they have now become thoroughways. In March 1961, traffic authorities had a conference on the roads adjoining and through the Park.⁴¹ It would appear from its findings and the evidence given before the Board, that with the passage of the years, further demands will be made on the road-ways in the Park so that for practical purposes, there may well develop three separate parks, divided by two important through ways. The two main

38. E.19.
39. T.233
40. E.92
41. E.7

ways were constructed in their present condition by authorities other than the Committee of Management, but the Committee, of course, as the managers of the Park, have had control of the roads. Up till the thirties, the gates of the Park were closed at sundown but roadways are now open at all hours. On the 19th December 1959, the Committee also closed Lakeside Drive for traffic on the grounds that it was dangerous because of potholes. Refusing to repair the roadway since it was no longer a scenic drive in the Park, the Committee kept the roadway closed for about 4 months until the Government agreed to carry out repairs to the road. The Committee had in several previous years used these roadways for motor racing, but in or about May 1959, the Government decided that it would not permit motor car racing in the Park, in December 1959, as planned by the Committee. It was not improbable that the closing of the Lakeside Drive was intended to be a show of strength and a reminder to the Government that as the Committee was deprived of revenue to repair the road, because of the prohibition of motor car racing, the Government itself would have to shoulder the responsibility of the maintenance of the roads which were used by the public as traffic lanes. Whether or not this was the purpose of the closure, the Department of Public Works repaired the road. At the Traffic Conference this year, referred to above, it was agreed that the cost of the maintenance of the three ways used for through traffic, namely Aughtie Drive, Lakeside Drive and Queen's Road Drive, should not be borne by the Committee of Management.

f. 2.31. Until June 1961, the Committee of Management has never had a full time Secretary-manager. There was an outside staff under the direction of a curator and foreman. Up till recent years, the secretarial work was carried out by a part-time secretary who, generally speaking, was a member of the staff of the Lands Department. There was also a part-time engineer

engaged to advise the Committee; in later years, he was an engineer on the staff of the Public Works Department. Each of these offices was carried on competently, but great demands were made upon the time of the incumbents of the office, and although given an honorarium for their services, they were quite inadequately recompensed for the time and expense they must have been put to. The real burden of management since 1947 fell upon members of the Committee, and in particular, the Chairman. In this regard, Mr. M. R. McKenzie, without any reward or recouping of his expenses, for many years has given outstanding and devoted service to the work of managing the golf course, sacrificing his leisure and being put to great expense to carry out his functions. Senator Kennelly, who was appointed Chairman in 1947, has made the Park his particular interest. Over the years he has given outstanding service to the interests of the Park, and indeed to the community at large, by his assuming the responsibility of management. During this period, many capital works have been executed, and these could only have been accomplished by untiring and continuous efforts of the person having the direction of the Park. Furthermore, his acquaintanceship with public men was used by him to the fullest advantage of the management of the Park. In the course of evidence, no one came forward to deprecate in any way the immense amount of time and effort given by Senator Kennelly to the work of managing the Park. Because of the arduous and demanding nature of this work of management, it was decided by the Committee, several years ago to appoint a full time secretary-manager to relieve the Chairman of the responsibility of day to day direction of the Park. Nothing, however, came of this until June of this year, when the Committee of Management appointed Mr. R. E. Burke, Senator Kennelly's son-in-law, as Secretary-manager of the Park.

2.32. It is against this background of history that the Board of Enquiry was appointed on 26th July 1961. The

two events which involved the Committee of Management and which occurred just prior to the appointment were: first, the agreement made between the Committee of Management and Bowling Centres Ltd., on the 19th June 1961, and secondly, the appointment of the Secretary-manager. Each of these events involved matters of principle to be observed by a Committee of Management. As to the first, there was involved the question of:

- (a) Possible alienation of parkland, or alternatively, creation of contractual rights and obligations which had, in fact, the same effects as alienation;
- (b) What relationship there should be between enclosed areas of parkland with restricted access and areas to which the public should have free access;
- (c) Whether the erection of structures in the Park was in conflict with established planning and zoning of the Metropolitan area;
- (d) Whether on economic or on any other grounds, it was necessary to allow private enterprise to use unalienated Crown land for business purposes;
- (e) Whether the Committee had power in law to permit use of park land for such purposes.

As to the second, there was involved the question of -

- (a) Whether an appointment of a full-time Secretary-manager was justified, and
- (b) Whether the method of appointment of Secretary-manager was adequate to obtain the most suitable appointee.

3. LEGAL CONSIDERATIONS.

3.1. The Committee of Management was appointed under the provisions of Sec. 221 LAND ACT 1958 (or its previous corresponding legislative enactment) and was thereby clothed with such powers as the Act conferred on it or was subject to such duties as the Act imposed on it. By Sec. 221, the Board

Immediate events prior to appointment of the Board.

Board's power to appoint committee.

of Land and Works might, subject to such conditions and for such term of office as it might determine, appoint any number of persons not less than three to be a Committee of Management of the Park. As has been pointed out above, it appointed the so-called Government representatives without any condition or limitation of time attached to their appointment. On the other hand, it appointed each municipal representative so-called only for such period as he was a member of his municipal Council and subject to the condition that he must be nominated by his Council. It is really erroneous to refer to any of them as representative,⁴² since the Board makes the appointment of all members. It is the Board's decision to limit the qualification of its own appointee by the conditions laid down by it. By sec. 221, the Board also has the power to remove any or all of the persons so appointed.

3.2. From the foregoing statutory provisions, it may be seen that -

- (a) the primary responsibility of ensuring a competent committee is placed on the Board of Land and Works in making its appointments, and defining the conditions of the appointments;
- (b) if the Board should err in any appointment, then it may quickly rectify its error by revoking the appointment and appointing another;
- (c) in making appointments, the Board may lay down any conditions for guidance and control of its appointees and to ensure the proper working of the Committee; and
- (d) the members of the Committee must be conscious that if they should fail in their task, they may be easily removed by the Board.

3.3. In fact, the administrative work of the Board in this respect is done in the Department of Lands and these legislative provisions have in practice created some kind of

42. See note 25 above.

Effect of
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powers.

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departmental control over the Committee. Members regarded the Committee as an agent of the Crown. When any matter might concern its principal, the members would regard the department as being the Crown, and so obtain the approval of the Committee's principal in taking action in such matter.

Members of the Committee in evidence stated that in delicate controversial matters, generally approval would be sought from the Lands Department.⁴³ In general, the Committee of Management and the officers of the department readily and satisfactorily cooperated with one another in their work.⁴⁴

3.4. The powers and duties of the Committee of Management are specifically stated in Sec. 222 LAND ACT 1958. It should be noted that under the section it is the Committee of Management or A MAJORITY OF ITS MEMBERS who may exercise the powers. In evidence, Senator Kennelly claimed that besides a deliberative vote, he was, in the event of an equality of votes, entitled to a second or casting vote.⁴⁵ In general this is erroneous. Powers of the Committee can be exercised only by a majority of members of the Committee. That means at present that seven members must agree in order validly to exercise a power. If only six agreed to exercise a power, then such six would have no power to do so, even if the Chairman were among such six. His presence or support cannot convert an equality into a majority. Senator Kennelly, in fact, on one occasion only exercised the privilege he claimed of casting a second vote. The Chairman also stated in evidence that he always waited to have a majority of members present before he conducted a meeting of the Committee.⁴⁶ He regarded a majority as a quorum. In practice this was quite sound. Difficulties could arise if, in fact, only seven members were present. In order to authorise any act of management, the

43. T. 218, T. 515 et. seq.

44. T. 1483-4, T.1122.

45. T. 92-3

46. T. 92

seven would have to be unanimous. On the other hand, if a bare majority were present and there were a division of opinion among those present, then the passing of a resolution by a majority of those present would not be an effective authority to exercise any of the Committee's powers. In order to act effectively, seven must agree in any event, whether there should be any number from 7 to 12 members present.

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3.5. The Committee by Sec.222(1)(a) is empowered to exercise all such powers functions and authorities as are conferred upon such Committee by any regulations made by the Board of Land and Works. Now the power to make regulations in respect of certain subjects is conferred on the Board by Sec. 218. These powers will be considered later in this part. In fact, the Board has exercised the power to make regulations and a detailed examination thereof will be made in Part VI hereof.

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3.6. The Committee is also empowered to exercise other authorities conferred on it by Sec.222(1)(b). It may either in the name of any one or more of its members, or in the name of some other person appointed by the Committee or a majority of its members, take any legal proceedings in support of its authority to do all such acts matters and things as are necessary for or incidental to the carrying into effect or enforcement of the regulations made by the Board. This provision recognizes that the Committee is not a juristic person but is simply an unincorporated collection of individuals, lacking (inter alia) the characteristic of perpetual succession.⁴⁷ This provision enables the Committee to bring legal proceedings through some person in a representative capacity. But even this power is limited to proceedings to enforce the regulations. It apparently would not assist the Committee to enforce in civil proceedings any of the contractual arrangements it has made with sporting bodies, if at any time it became necessary to

47. c.f. Chaff and Hay Requisition Committee v J.S.Hemphill and Sons Pty. Ltd. (1947) 74C. L.R.375.

consider legal proceedings.

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3.7. In addition, by Sec. 222(I)(c) power is conferred upon the Committee to manage improve and maintain the land for the purposes for which it was reserved and for that purpose may employ officers servants and work men. Now, it should be noted that these powers are in addition to those conferred by the regulations made by the Board. Each of the words "manage", "improve" and "maintain" is of the widest import and does not lend itself to a precise definition. The operation is, however, limited by the provision that the powers must be exercised "for the purposes for which the land was reserved". In this case, the land was reserved for "a public park" and accordingly, the powers can be exercised only for the purposes of a public park. Consideration of what is a "public park" will be postponed until the examination of the Committee's powers and duties has been completed. In the meantime, it should be noted that "to manage a public park" confers power upon the Committee to control all the affairs and conduct of the Park. "To improve" the Park confers power to add something to and to form an integral part of the Park which it formerly lacked and really required for the full enjoyment of its use. Such improvement could possibly be levelling out, sowing down with grasses or the erection of some structure, but the nature of the improvement must be limited in nature by the purposes of the future use of the land as a public park and the relationship of the improvement thereto. Likewise, "maintenance" confers power to keep the Park in at least the condition to which it may be improved from its natural and unimproved state.

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3.8. By Sec. 222(I)(d), the Committee may grant a permit to a person to depasture sheep, cattle and other animals. It is sufficient to notice that this power was exercised by the Committee of Management during last century and early this century. Having regard to the changing conditions in the

metropolis and the change in character of the Park, this power has not been exercised for some years.

3.9. By Sec. 222(I)(e), the Committee is permitted to expend moneys received by it in the following manner:

- (a) in the management improvement and maintenance of the land as aforesaid, that is, for the purpose of carrying on a public park;
- (b) in the employing of officers, etc. as aforesaid, that is, for the purpose of carrying on a public park; and
- (c) for such other purposes as the Board of Land and Works in any particular case should approve.

It is to be noted that in the statutory provisions there is to be discovered an indication of the type of receipt which the legislature might expect the Committee to receive. The subsection refers to "tolls, fees, charges or any other moneys". Although "any other moneys" is a phrase of wide connotation, a Court of interpretation might limit it by the nature of the preceding words.

3.10. Besides THE POWERS set out above, the Committee is under A DUTY to enforce the Regulations made by the Board. It must carry out all such duties as are imposed upon it by any regulation and has the EXCLUSIVE authority to do all such acts, matters and things as are necessary for or incidental to the carrying into effect or enforcement of all such regulations. It should be observed that the Lands Department, even with the best will in the world, could not absolve the Committee from its obligation to carry out the duties imposed by statute upon it. Equally, the Department could not authorise the Committee to do anything which the Act or Regulations expressly or implicitly did not permit. In other words, the members of the Committee cannot avoid responsibility by merely obtaining the consent or approval of the Lands Department.

3.11. By Sec. 222(I)(f), the Committee was under a duty to keep a full and particular account of all sums of money

uty to
keep
accounts.

received and expended by it and was bound to furnish annually to the Secretary for Lands a statement of receipts and expenditure and of the balances in hand, and if requested, to furnish full particulars of any or all of such receipts and expenditure. By the performance of this duty, the Committee's activities are under the constant surveillance of the Lands Department. If as happened in the case of the accounts of the Committee of Management, some items were not explicable without fuller particulars, then it was and is always open to the Secretary for Lands to obtain further and better particulars. As, however, there are over 1,000 Committees of Management consisting of individuals, and some thousands of Municipal bodies acting as Committees,⁴⁸ it may be assumed that little time could be given to a careful examination of the accounts of each reserve by the Department.

permanent
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3.12. From the foregoing recital of the Committee's powers and duties, the importance of the nature and character of the reservation becomes apparent. By Sec. 6 THE LAND ACT 1869 (now Sec. 14 LAND ACT 1958) it was provided that "The Governor may ... reserve from sale ... permanently any Crown lands which in his opinion ARE REQUIRED FOR ANY PUBLIC PURPOSE WHATSOEVER, or for ... PARKS ... OR FOR THE RECREATION CONVENIENCE OR AMUSEMENT OF THE PEOPLE". By Sec. 7 THE LAND ACT 1869 (repeated in substance but in amended form in Sec. 18 LAND ACT 1958) it was provided that "after any land has been permanently reserved from sale every conveyance or alienation⁴⁹ thereof except for the purpose for which such reservation has been made shall be absolutely void as well against Her Majesty and all other persons whomsoever". Because of recent events in the Park, it is necessary to consider closely these provisions.

48. T.1492.

49. "Conveyance denotes an instrument which carries from one person to another an interest in land" Lord Cairns in *Credland v Potter* (1874) L.R.10 Ch.8 at p.12. See also *Eastbourne Corporation v A.G.* (1904) A.C. 155, 156. "Alienation" has a similar denotation, *Public Trustee v Synon* 1944 S.A.S. R.102.

public
park.

3.13. The reservation of Albert Park, as has been observed, was for a "public park". At that period in 1876, the Governor-in-Council must have been of opinion that the land was REQUIRED, that is, needed for a public park. Accordingly, he reserved the land from sale and no part of it can be alienated from the Crown except by Act of Parliament. With the growth of the metropolis, the need for a public park within the central area has become more marked, and in consequence, care must be taken to ensure that no change in the character of the reservation will defeat the purpose of the original reservation, except by the will of the people as expressed through Parliament. The expression "public park" has received judicial consideration on a number of occasions and the old meaning of the word "park" as an enclosed piece of ground in which beasts of the chase were enclosed for the pleasure of those who had the means to indulge in such luxury has been rejected.⁵⁰ Doubtless when the reservation was made in 1876, the current meaning to be assigned to the phrase "public park" may be discovered in part from the dictum of Mr. Justice Molesworth uttered in 1867. He said, "The public park of these times is another thing; it is for the gratification and use of the human species and not for occupation by beasts".^{50A} It may, therefore, be assumed that the meaning of "public park" as used in the reservation was one of those set out in the Shorter Oxford Dictionary, namely: "an enclosed piece of ground, within or near a city or town, ornamentally laid out and devoted to public recreation, 'a public park'". Now it has also been established judicially that there are certain characteristics attached to a "public park", viz:

- (a) Prima facie, the public has "free and unrestricted use of it".⁵¹

50. C.F. re Ripon Housing Order (1939) 3All, E.R.548,553,557.
50A. A.G. v Southern Freehold Co. (1867) 4 W.W. & A.B (E) 66 at p. 78.
51. Per Lord Halsbury in Lambeth Overseers v London C.C.(1897) A.C. 625 at p.630.

Character-
istics of
public
park.

- (b) The Committee of Management are "merely custodians ...
to hold it and manage it for the use of the public".^{52.}
- (c) Where, however, it was clearly ancillary to the proper
regulation or conduct of the area the public may be
denied access to a portion of the park, (e.g. keeper's
lodge, bandstand or a refreshment booth) or indeed, at
certain periods, to the whole park (e.g. after nightfall).
"These exclusions were the manifestations of the duty and
exercise of management and their total area compared
with the whole park was negligible".⁵³ "The power to
erect bandstands (which amounts to an exclusion of the
public from the site where they are erected) ... were
reasonable powers for increasing the public use and
public enjoyment of the park, were in no sense
antagonistic to the complete dedication of the park
as a public park".⁵⁴
- (d) The amount of exclusion of the free and unrestricted
use by the public must be one of degree, and must have
regard to the claims of time and circumstance. "In
modern times provision for some form of organized
athletics the spectacle of which may be enjoyed by the
public, is not inconsistent with a duty to provide for
recreation by the public, and in the present case the
sum total of the extent to which members of the public
are excluded from free entry into the field forms a
minute fraction of the total hours of day time
throughout the year".⁵⁵ This dictum can be reasonably
applied to the existing facts at Albert Park.⁵⁶

52. per Lord Herschell in same case at p.632.

53. per Lord Evershed M.R. in *Burnell v Downham* U.D.C.
(1952) 2 Q.B. 55 at p.66.

54. *Liverpool Corporation v. West Derby Union* (1908) 2K.B.647.

55. *Burnell's case* supra at p.67.

56. *Sheffield Corporation v Tranter* (1957) I.W.L.R.843
at 854,

- (e) But the exclusion of the public must be clearly ancillary to the management of the Park. Hence, if a restaurant could not properly or sensibly be regarded merely as an amenity of or ancillary to the Park, but could acquire an altogether independent and distinct status comparable to and competitive with other restaurants in Melbourne, then it would lose its character as part of the Park and exist in the geographical limits of the area as an independent unit.⁵⁶
- (f) There seems to be no reason in law why under its power of management, the Committee should not by a contract give a sporting body a licence to use a specified portion of the area.⁵⁷ By virtue of the legislative provisions set out in the last preceding paragraph, no tenure could be created over the specified area but the other contracting party could obtain a contractual right of comparatively unrestricted use.⁵⁸ Of course, in order that the Committee may validly enter into the contract, such use by the other contracting party would have to be ancillary to the purpose or management of the Park. This inhibition may cause any Committee of Management some difficulty in borderline cases where the purpose of contracting may be difficult to define among a number of competing factors influencing the particular arrangements.
- (g) It also seems to be established that to charge admittance is not necessarily contrary to the general proposition that the public shall have unrestricted entry into and access to the Park. Again it is a question of degree.⁵⁹ The Committee must, however, devote any monies received by it for the maintenance of the Park.

56. Sheffield Corporation v Tranter (1957) I.W.L.R.843 at 854.

57. See Brockwell Park Case (1897) A.C.625, Burnell's case and Tranter's case supra.

58. Winter Garden Theatre v Millenium Productions (1948) A.C. 173. A.G. v Shire of Dandenong (1942) V.L.R. 33. Burns v Shire of Woorayl (1944) V.L.R. 166.

59. See Liverpool Corporation case and Burnell's case United etc. G.M. Co. v Koh-i-noor Co. 3 W.W. and A'B. 63 at p. 75. Randwick v Rutledge (1960) A.L.R. 66 at 70, 87.

Weaknesses
of Reservation
cannot be overcome.

3.14. It was suggested that despite the provisions of what now appear in Sec. 21 Land Act 1958 and which have existed from the earliest enactment, there had not been four publications of the "intention to reserve or the setting out in the publication that was made", a full description and statement for the purpose for which the reservation was made. Any difficulties arising from this weakness in carrying out the statutory duties appear to be overcome, first by the provisions of Sec. 16 which provides that land purporting to be permanently reserved shall be deemed to be permanently reserved for the purposes for which they purport to have been reserved, and secondly, by the recitals in various statutes excising land and in the 1932 Act by which Parliament itself has recognized the permanent reservation of the area for a "Public park".

Board's
regulations
making
power.

3.15. The power to make regulations with respect to the Park was conferred upon the Board of Land and Works by sec. 218 LAND ACT 1958. This power may be contrasted with the power given to Trustees in whom a park is vested by Crown Grant. Such Trustees, with the approval of the Governor-in-Council, may make rules and regulations for (inter alia) the collection and receipt by such trustees of tolls, entrance fees or other charges for entering into such area or part thereof but such power to make regulations does not apply to any land granted as a "public park". As will be seen no such prohibition restricts the power of the Board to make regulations for the Park.

regulations for
management
etc.

3.16. The first power conferred is to make regulations for or with respect to the care, protection and management of the Park. It follows that the Board of Land and Works can confer powers or impose duties on the Committee which is bound by the

60. See para.2-9 supra.
61. See paras. 2-23 and 2-11 supra.
62. See para.3-5 supra.
63. See para. 3-7 supra.

provisions of sec. 222 to enforce and administer the regulations and is given exclusive authority to do so.⁶² At the same time, besides presenting such powers and duties, the Board may promulgate any regulation which it believes to be necessary for the proper conduct and care of the Park. As has already been pointed out, regulations have been made from period to period and the present regulations will be considered in detail in a later part of this report. It is sufficient to point out at this stage with respect to this head of power, the verbiage creating the power may be contrasted with the verbiage used in giving power to the Committee. There, the words are "care, protection and management" whereas in sec. 222(1)(c) the words are "manage, improve and maintain". Hence the regulations may confer power much wider in scope⁶³ than the limited power of management contained in Sec.222(1)(c). At the same time, the regulations could not impose any obligation or confer any power to "improve" the Park; the Act; however, gives such a power.

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3.17. The second power is to make regulations for the preservation of good order and decency in the Park. The third regulation making power covers the fixing collection and receipt of tolls entrance fees or other charges for entering in or upon the Park or any specified part thereof, by persons animals or vehicles. This power is, on its face, not limited to charges by the Committee, but could be exercised with respect to any person making charges for admittance. The Board is also empowered to make regulations for or with respect to any other purpose relating to the Park which is reasonable and which does not interfere with the purpose for which the Park was reserved.

3.18. That concludes, so far as is necessary for this report, the survey of the legal provisions found in the LAND ACT 1958

62. See para 3-5 supra.
63. See para. 3-7 supra.

covering the constitution powers and duties of the Committee. There are, however, other statutory provisions to which some attention should be paid. In particular the provisions of the TOWN AND COUNTRY PLANNING ACT 1958 may affect the management of the Park. Provision is made in Sec. 8 for a planning scheme. In sub-sec.(2) it is provided that notwithstanding any thing in that Act, where any scheme includes land permanently reserved for any of the purposes contained in sec. 14 of the Land Act 1958, the scheme to the extent to which it is proposed in the scheme to deal with that land or any portion thereof shall not take effect unless and until the reservation of such land or portion is revoked by Act of Parliament. Although, as yet, there is no planning scheme finally adopted for Melbourne, these statutory provisions are important. Under the proposed scheme brought down by the Melbourne and Metropolitan Board of Works, it is intended to widen Queen's Road by 100 feet, taking right along the whole length of the Park therefor. Before this scheme can be implemented Parliament will have to legislate upon the matter and decide whether it is desirable to take such parklands for traffic purposes. There has, however, been an interim development order promulgated by the Board of Works, and accordingly the provisions of sec. 14(4) of the abovementioned Act apply to the Park. The Committee^{in effect} may not during the continuance of the order carry out any works without consultation with the Board of Works and if there is no agreement between the Committee and the Board thereon, the matter may be submitted to the Governor-in-Council.

4. PRACTICAL CONSIDERATIONS.

4.1. In assessing the work of the Committee of Management, it would be unjust to do so having regard solely to a legalistic approach. Indeed, counsel appearing for the Committee urged that the Board should not be too astute to decide the various matters arising for decision on the basis of legal criteria. A proper assessment cannot be made without having

some standard to adopt, and to this extent, counsel's submission went too far, insofar as it was an invitation to disregard legal rights and obligations. On the other hand, a realistic assessment can be made without ignoring the requirements of the law.

4.2. A close examination of the history as disclosed on the files of the Lands Department show that the main problem facing every Committee of Management was finance. At various times over the 100 years, governments were generous in making grants, of quite large amounts, but generally the financing of activities of the Park seemed to be of a hazardous nature. It, therefore, redounds to the credit of the present Committee that it has, at least for the time being, overcome the difficulties of financing its capital works without in any way sacrificing the demands of maintenance. In achieving this objective, it may be that the Committee has entered into some unorthodox arrangements with unincorporated bodies who in strict business circles may not be given any extended credit. It is to the good fortune of such bodies that they have found a very reasonable and well supplied Committee of Management to assist them. The Committee on the other hand, depends on the gratitude of members of such bodies and their conscientious control by honourable men to ensure that obligations, however tenuous in law, will be observed. Together with the income obtained from Commonwealth Occupancy, parking fees and golf fees, the income from these bodies ensures a steady income for the Committee. Furthermore, since 1947, grants have been regularly made by the two municipalities. These have been matched by the State Government until last financial year. It should be noted that from the early 30's until 1947, the State Government had not made any Grant to the Committee.

4.3. There are obviously difficult problems of a practical nature in the management and maintenance of the Park. From earliest times, there has been a weed growing in the lake.

Energetic and expensive action must be taken from time to time to keep ^{it} in check. On the other hand, from earliest times, Committees have had difficulty in getting trees to grow in certain areas, owing originally to the salinity of the soil and now apparently to the nature of the garbage filling. This brings about a two-fold problem. If a tree succeeds in flourishing despite the handicap of the nature of the soil, there is a very responsible decision to be made before such tree is removed for any purpose. On the other hand, trees, at great expense, have been planted but have been lost despite their care. Again because it is open after night fall, there is always a grave risk of danger from vandals. On the whole, the witnesses, having knowledge of the matter, regarded this risk as not as great as might be thought but agreed that vandalism did exist and did cause damage at times. All these matters, of course, raise the expense of maintenance of the Park. When income for the future is not known and day to day expenditure or maintenance costs must be met, it is very difficult for the Committee of Management to plan ahead, or to formulate any defined policy as to the future development and improvement of capital works in the Park. Having regard to these demands of maintenance and improvement, the Committee must always be on the alert to see that its income exceeds its recurrent requirements. There is always a temptation to cut through "red-tape" (as the inhibitions of statutory provisions, administrative controls and regulatory strictures may be regarded) to achieve this objective.

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4.4. The area has been used by many bodies, having different personalities directing them, some believing they were unjustly dealt with, while others believing they were being generously treated. In consequence, it was not surprising to find that there were some allegations of unjust treatment made against the Committee. These criticisms will be dealt with later under

the terms of reference. On the whole, however, these were insubstantial and arose mainly from the necessity of reconciling the demands of different claimants. To illustrate, reference may be made to complaints by the Victorian Model Aeronautical Association. When analysed in the evidence, it appeared that the Committee was being pressed on the one hand by nearby residents to have the model aeroplanes banned from the area. It, therefore, was impelled to limit the use of the Park to such degree as to lessen the annoyance to nearby residents. On the other hand, the Association complained at the limitation in its activities which its spokesman admitted were noisy⁶⁴ and "which was banned in many other places."⁶⁵ It is these kinds of competing claims which create a great practical problem facing the Committee in their day-to-day management.

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4.5. Closely allied with the last mentioned problem is the loss of initiative suffered by certain bodies and sports in their activities in the Park. The consequence is that capital works, constructed at considerable cost, are often wasted and at the same time, complaints are made against the Committee for its apparent lack of interest in the particular sport or particular association. The best example of this was the erection of the cycling track. The building of this track cost approximately £4,000⁶⁶ and within a year or so of its being built, it was abandoned by the cyclists, the actual reason for which is immaterial. Complaints⁶⁷ were made by a witness representing amateur cycling, that soccer took charge and the cyclists were put off the track. When analysed, it appeared that the track was rough and affected by the stops of the soccer players; the cyclists did not do anything themselves to rectify or improve the track, did not pay the Committee of

64. T.1908

65. T.1906, 1922

66. T. 579

67. For cross-examination of Senator Kennelly on this sec. T.582. See T.1892 for the evidence of complainant.

Management anything for its use or erection and, without communicating with the Committee, simply abandoned the area. The Committee was some £4,000 poorer as a result of the experience. At present, tennis appears to be out of favour and the tennis courts are not being fully used and some may be broken up, particularly near Aughtie Drive. The lesson from these experiences is that no Committee can lay down that when asked to assist any particular body, in some particular sport, the demand for such assistance must be satisfied, irrespective of all else. The first requirement is a close investigation of the organization and individual executives running the particular sport. The second requirement is an accurate appreciation of the appeal of the sport and whether the appeal will continue. This is a particularly responsible decision, particularly in cases where the sport is comparatively novel to our country or may be passing through a phase of popularity because of the influence of persons from overseas. These people may not have had the privilege of playing outdoor recreation as do the majority of Australian sportsmen during the whole of the year. Further, they may not have, for various reasons, joined in the local established interests of cricket and Australian football. The responsibility of such decision may be further accentuated if it should involve, as it frequently does, the expenditure of large sums of public money. Much has been made, both in evidence and in submissions, of the need to meet the requirements of New Australians for both indoor and open air recreation. Whilst one may concede the strength of such views, the sporting character of this community has been long established and its renown is world wide. There have been for many years established organizations in practically every sport. The nature of these sports has, in the past, been influenced by the fact our forbears were mainly of English stock who, in the

early days of settlement, introduced cricket into this country. Nevertheless, from period to period, all kinds of exotic exercises have been introduced into Victoria, and few have flourished to the same extent as cricket and Australian Rules football. One characteristic has, however, developed in contrast with other countries in the world. Although large crowds attend well publicised sporting events as spectators, the number who participate in sport in Victoria is extraordinarily large. To wander through all the major parks in the metropolitan area on a Saturday afternoon, winter or summer, will disclose the interest shown by Victorian youth in participating in sporting activities. Furthermore, the Park itself is probably one of the prime examples in which to see youth, male and female, at play in the fields in the week-end. The major object for the attention of the Committee of Management should then be to spend its monies wisely in capital works, not to achieve giving comfort to onlookers but rather to provide more areas for good healthy participation in well established and well organised forms of sport where Australian standards of sportsmanship and gamesmanship have^{been} well established and understood by those taking part. Whatever the form of activity, whatever its original source, the aim should be participation, and if possible, by all youthful members of our Community, whether native born or late newcomers. Assimilation will come from the mixture of individuals and not from segregation into racial groups. No discrimination should be practised against any particular recreation, if it is properly organised by responsible people. On the other hand, there should be no favoured sport, merely because, at present, it has a large New Australian following of onlookers or for that matter, a large following of native born Australians. Again, one sport, like Baseball, should not be condemned merely because it is hard on the surface of its diamond. Indeed, if that were the test, very few winter field sports

would endure. Soccer is hard on the pitch, and indeed, the complaint made by the cycle club representative was the effect of soccer players' stops on the surface of the cycle track surrounding the soccer pitch.

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4.6. Some considerable time has been spent on considering this matter, because of the importance attached to it by many people who appeared before the Board. Unfortunately, the evidence given was influenced rather by sentiment than logic. There is, however, a serious problem for the Committee of Management to resolve. Besides conciliating conflicting demands for the facilities of the Park, it must, in making its choice in any particular case, be sufficiently far sighted to see whether the greatest good will ensue to the greatest number from the expenditure of public monies by any decision it should make. In doing so, it must not be moved by false sentiment or be moved by the pressure of transient popularity, or be impressed by possible financial benefits to be obtained. Its policy should be to encourage participation.

Function
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4.7. The Park is not an area for use by local residents only, but it is a metropolitan open space for use of many people living outside the South Melbourne or St. Kilda municipal boundaries. It has a function of providing open space and fresh air in the midst of a fairly densely populated centre of a metropolis. In any planning of the development of Melbourne, attention must be given to this area. In fact, in the proposed planning scheme by the Melbourne and Metropolitan Board of Works, the function of the Park as public open space has been accepted. It would be absurd for Parliament to set up the Board of Works as a planning authority and for the Committee not to co-operate with duly constituted authority. In its development of the Park, the Committee is faced with the problem of making decisions which could easily alter the character of the area under its control

The legal requirements there have already been adverted to but a realistic assessment must also be made. The Committee in its desire to get things done, may disregard the advice of the town planners but in the end it must be to the benefit of the whole community if there were practical co-ordination between the two bodies.

4.8. Finally, the capital value of the Park at the present time is a factor which should influence the Committee in its decisions. It appears that for the purpose of assessing the Commonwealth rent for its area, a valuation of the area was made. A sworn value was made of the area at £20,000 per acre as bare land. This gives a capital value of the land, allowing for the lake and roadways, over £7,500,000. The Committee in fixing the Commonwealth rent fixed it at 5% of the Capital cost. In dealing with sporting bodies, it would not be unjust for the Committee to lay down some conditions to protect its assets, moveable or immovable, and to ensure an orderly conduct of the area. These sporting bodies are receiving a great benefit from the community at large for providing them with the use of land so convenient and close to the City at a mere nominal rent in relation to the capital value of the land occupied or used by them. These considerations apply equally to the use of the Lake and despite the long occupation by some clubs, it should be remembered that such clubs have been allowed to remain for a long time in occupation of a valuable piece of land at a very nominal cost. At the same time, the historical role of public parklands is to afford unrestricted access to persons who care to indulge in the passive recreation of wandering through picturesque surroundings. This can be shared by everyone and no privilege of use is attached to any class. Members of Sporting bodies, therefore, who obtain the privilege of using areas in the Park

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68. See para. 3. 18.
69. T.114.

have an advantage over other members of the community. The Committee must, therefore, attempt to preserve a due medium between the claims of those who wish to usurp the use of this valuable site for highly organized profit-making business out of sporting activities, as against those people who find pleasure in walking through the public open spaces or indulge in sporting recreation in a not so highly organized fashion. The increasing amount of leisure which must arise with mechanisation and automation must increase this problem. In making decisions, as for example, to crystallize the use of any area of the Park, as has been done in the cases of the two cricket grounds and the two bowling clubs, the Committee may well lose the flexibility of the possible uses of any area. Despite criticisms of failure to plan for the future, the Committee really cannot determine today what will be the demands for sporting activities in the future. It may be that in the long run the decisions of the Committee based on expediency arising from circumstances will be of greater benefit than any inflexible planning which may well defeat the true purpose of such an area.

4.9. In this regard, the erection of structures, the alteration of features and the construction of ornamental or artificial sports fields or courses entails also the expenditure of public money. The Committee by its expenditure of funds considerably increases the capital value of the Park. At the same time, it can by such actions considerably alter the character of the Park, by putting up buildings and enclosing grounds. At some stage, in order to retain its character as a public open space, a stop will have to be made. Remembering the practical requirements of the public as well as legal powers and duties, the vital questions in this inquiry emerge. Has the Committee of Management so carried out its work of development and improvement that -

- (a) every reasonable recreational interest of the public has been and is being adequately catered for?

- (b) it can meet the requirements of the future as the popular appeal for old and new recreational activities ebb and flow?
- (c) any and what new buildings should be erected or should a halt now be called?
- (d) the Park still retains the character of a picturesque area for carrying on healthy outdoor activities, passive and active, with a reasonable reconciliation of the demands of the various sections of the community interested in such activities.

5. GENERAL MANAGEMENT OF THE PARK.

5.1. It is now proposed to deal with each of the terms of reference, the first reference is to report on the management and control of the Park and the methods and system of administration employed by the Committee of Management. In order to assess the management of the Park, it is necessary to establish some standard by which the actions of the Committee may be measured. It is, therefore, proposed to examine, first, whether the Committee has in recent years successfully conducted the Park for the purposes which it was reserved, secondly, to discover whether there were any and what criticisms levelled at such management and whether any and what answer has been made to such criticisms. Finally, it is then intended to consider the methods and system employed by the Committee.

5.2. Obviously the method of assessing the work of the Committee is to see what, if anything, it has achieved in recent years. In view of the leading part taken by Senator Kennelly on behalf of the present Committee in the affairs of the Park, it is not unfair to commence the consideration of the achievements as from the period when he became chairman. Both Mr. Cullity and Mr. Woodward adopted this course and it is very convenient to take such period as

the commencing point. Possibly, the most outstanding development during this period has been the abandonment of the western area as a "tip" in 1950⁷⁰ and its reclamation and its subsequent development for playing fields since that date. The area had been used continuously by the South Melbourne Council for nearly fifty years, and doubtless, that municipality might very well have regarded the use as being developed into a prescriptive right. Furthermore, in the early days, the south-west corner of the Park in the City of South Melbourne was frequently very wet and unattractive, and consequently lent itself for use as a tip, being suitable for no other purpose in its natural state. It was convenient to the garbage collectors and of all the bodies connected with the Park, the South Melbourne Council had been its most consistent monetary supporter. Nevertheless, the Council was prevailed upon to cease its garbage disposal in the area in 1950. The Committee of Management then, with remarkable vigour and planning, developed the area. The main burden of this work was undertaken by the Chairman and the honorary Engineer, Mr. A. C. Drew. Naturally, the cost of the development had to be covered and the Chairman, on behalf of the Committee, adopted a number of ways to finance the project. The foremost of these were to obtain a loan from the State Treasury, to hold motor car racing and to increase the Commonwealth rental for its occupation. There must have been considerable administrative work undertaken to accomplish these three things. The main sources of money for the large capital works involved in building up, levelling off,⁷¹ sowing down and draining the area were the proceeds of the racing and the Commonwealth rent. Having established the surface of the area, the Committee then set about dividing it into playing fields and surrounding each field with a pipe

70. For the history of the closing of the "tip" See T.2441.

71. The amount of soil and the cost thereof to level off the ground, was as follows: 1956/57 30,000 cub.yds. at cost of £27,564; 1957/58 - 4,893 cub-yds. at cost of £5,540; 1958/59 22,450 cub.yds. at cost of £2,700; 1959/60 4,150 cub.yds. at cost of £4,629; 60/61 5,259 cub.yds. at a cost of £5,761. See T.2444.

fence to define its boundaries whilst providing dressing and toilet amenities in the area. This was considerably assisted by the generosity of the late Sir Frank Beaurepaire with whom the Chairman made contact to interest him in the development of the area.⁷² In March 1960, this centre was formally opened by His Excellency the Governor, Sir Dallas Brooks. He was greatly impressed with what he saw, for in the course of his address he said "I doubt if there is a better park so close to the centre of the City anywhere else in the world".⁷³

By bringing the area into use as playing fields, the Committee has increased the number of ovals available for organized sport by some fifteen which provide areas for a large number of people from all over the metropolitan area. One of the exhibits⁷⁴ places before the Board is set out in Appendix IV hereof to demonstrate the large cross-section of the community that use the facilities of this area for healthful sporting activities. There are, indeed, few areas so close to any city in the world that cater so adequately for sport. The question emerges - was this development of playing areas one of the main purposes of the reservation as a public park. It would appear from the history of the development of the Park set out above, the Australian characteristic of indulging in healthy outdoor sporting activities, in parklands, particularly in team games as illustrated by an inspection of any public park in the Melbourne metropolis during any week-end, and from the characteristics of a modern public park as described in the judicial decisions referred to above, the answer to this question must be in the affirmative. As to whether development of playing areas has been overdone or should be qualified in any way, will be discussed later when the criticisms of the Committee are dealt with.

72. T.2449

73. E.88. See also E.86, E.87.

74. E.82

5.3. The foundation of the successful reclamation of the area was, of course, the ability to finance the undertaking. The broad nature of these efforts were set out in the last preceding paragraph but some attention should be paid to the details so that the success of the work of the Committee in this regard may be properly understood. As noted in the last part of the Report, finance played a large part in the affairs of the Committee for the time being. And it still does. ⁷⁵

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The following figures of the amounts received from the Commonwealth are indicative of the success attending the negotiating power of the Chairman to increase the rents payable -

From 1st July 1943 to 1st May 1945, £102/18/- per annum;
1st May 1945 to 1st April 1948, £123/8/- per annum; 1st April 1948 to 1st November 1950, £2,325 per annum; 1st November 1950 to 1st October 1952, £3,487/10/- per annum; 1st October 1952 to 1st July 1957, £4,650; 1st July 1957 to some time in 1958 £5,583/7/- per annum; 1958 to 1st August 1958 £46,756/5/- per annum; from 1st August 1958 to date £42,743/15/- per annum.

These figures illustrate the pertinacious efforts made by the Committee, and particularly the Chairman, to ensure that the Commonwealth paid a reasonable sum for the occupancy of very valuable land, thereby giving the Committee a financial security it had never enjoyed before.

5.4. Motor car racing in the Park was debated considerably before the Board ⁷⁸ and there can be no doubt that the five meetings did provide large sums of money whereby the Committee suffered no embarrassment from a lack of funds. In March 1955, a motor car race meeting was held and the Committee received therefrom the sum of £4,920. In March 1956, a further meeting was held and the Committee received £8,389/17/5. As a result of a meeting in November 1956, a sum of £27,263 was received.

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75. T.2434.

76. A full account of the negotiations appear T.2439 et.seq. See also E.89.

77. T.2527

78. T.415 et.seq. T.570 T.684 et.seq. T.754.

and from a meeting in March 1957 the sum of £2,012. Late in 1958, a further meeting was held and approximately £14,868 was received.⁷⁹ It is, therefore, not surprising that Senator Kennelly stated in evidence that he still wanted the Car Racing back.⁸⁰ He had regarded it as a valuable source of revenue as well as giving pleasure to many people. On the other hand, Mr. Cox, another member of the Committee, was opposed to car racing and advanced a number of very plausible reasons for opposing it.⁸¹ If Senator Kennelly is correct in his recollection there was apparently a sharp division of opinion in the Committee on the question of the motor car races about 4-5 years ago, because it was the only occasion that as Chairman he exercised the privilege he claimed of a second or casting vote,⁸² when there was an equality of voting. Local residents did justifiably complain of the noise and there were some complaints about closing the road.⁸³ A number of other complaints were set out in a letter from Mr. A. J. Jones of the Middle Park Branch of the Democratic Labour Party to the Town Clerk, South Melbourne, sent in December 1956.⁸³ Even Senator Kennelly was happy when a meeting was completed.⁸⁴ Two accidents has occurred, one being a fatal accident when a racing driver was killed and the other being an accident to an official when a racing car left the track. Doubtless, it was a dangerous pastime and must have been a source of worry to the promoters. The position at present is governed by a Regulation promulgated by the Board of Land and Works. In the draft submitted by the Committee to the Board of Inquiry of the regulations it desires in the future, it is significant that no change is sought in this regulation.⁸⁵ Because of the present importance of the roads as throughways, this seems to

79. T.439-44 c.f. figures in E.50

80. T.2425A.

81. T.685

82. T.93.

83. T.422.

84. T.423. T.589

85. E.78 Reg.3(b) Reg.59.

be eminently reasonable. Since it was quite reasonable for the Traffic Conference in March 1961 to recommend that the Committee should be released from the burden of maintaining these thoroughways, so it would appear equally just that their character as public highways should be preserved and always remain open to the public, except for extraordinary circumstances to be decided by an outside body and not the controllers

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of the Park. If at some future period, the Committee must obtain further revenue from further sources, then it is only right that some consideration might then be given to the matter. In the meantime, the present position should continue. No preponderance of requirement, either based on experience or reason was advanced to dictate that motor racing should be permitted at the Committee's discretion. Because of the new character of the Park driveways, they should be considered as having all the attributes of highways and generally should not be closed to the public at any time. To conduct a noisy (and perhaps dangerous) form of recreation and amusement even at a handsome profit, does not in itself afford evidence of such extraordinary reason. Even to deprive the Committee of the means to erect a possible administration building does not add anything to make it an extraordinary circumstance.

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5.5. If the views of Mr. Bridge had been known earlier, it might be that the detriment of motor car racing might have had to be balanced against what he regarded as bad planning in the Park by the failure of the Committee to pull down the three Commonwealth stores and the extension of the buildings to the west therefrom. In evidence, Mr. Bridge, who is an architect and a local resident living on the edge of the Park, said, "This man ... pointed out that Senator Kennelly was having a tough time in getting money. I suggested why don't they continue car racing to get more money. He said that the

86. T.1380
87. T.2292
88. T.879

public had set up a cry about it, too much noise, and so on ... The reason I appeared is that I prefer to have car racing for a few days rather than extensive building projects in the Park".⁸⁹ Unfortunately for Mr. Bridge, the decision to retain the Commonwealth buildings has been made and it is in this regard the Committee can rightly claim, even with dubious legal authority, it has achieved something of immense importance to the youth in Melbourne,⁹⁰ and at the same time ensured a reasonable revenue for its future needs. None would have been able to justify the erection of such buildings by the Committee, but it was a wise businesslike decision⁹¹ to convert existing structures for use as sports stadia. As has been pointed out, it extended the present use of this portion of the Park area for well conducted and well disciplined sporting activities. Counsel for the Committee has referred to the commendatory remarks of public men who attended the opening of these various centres to support the validity of the Committee's decision. The most eloquent evidence in favour of the Committee's decision was a visit to and inspection of the centres when they were being used in healthy exercise by exuberant and youthful Australian sportsmen and sportswomen. The only possible weakness in the decision was in the changing interests of youth in sport. Experience has shown, even in this Park, of the rise and fall of enthusiasm for the various sporting activities. Since charges are made to take part in the activities of these stadia, there is always the temptation of a youngster to seek a different avenue of recreation if he can obtain it, either more cheaply, or in a more salubrious surrounding. At present, however, there is no sign of deterioration of interest and the calibre of the executives who appeared to give evidence, inspired the feeling that at the present time, at least, the organization of the centres was in good hands and the sports were being well conducted.

89. T.2291

90. T.1449

91. T.2304, T.1509, T.1424.

5.6. The Committee has proceeded with a plan to make this portion of the Park into a centre of indoor sports. It has undertaken the erection of squash courts nearby and these will be available next month. A good return is hoped to be obtained from these new courts. To complete the indoor sporting area and at the same time obtain a good revenue from this portion of the Park, the Committee entered into the contract with Bowling Centres (Holdings) Limited. The receipt of £5,000 per annum was a great temptation to any Committee, and it was understandable that counsel for the Committee should argue this was quite a business achievement on the Committee's part to have entered into this contract. Whilst conceding the merit of such an arrangement, there was implicit in such project some violations of principle which will be more conveniently dealt with under the criticisms.

5.7. Furthermore, the Committee has not forgotten the requirements of passive recreation in the Park. Considerable funds have been expended on tree and shrubbery planting and a concrete walk is in the course of construction right around the Lake. Despite difficulties from vandalism, careless beautifying motorists and the nature of the soil, there has been a genuine attempt to beautify the area. Whilst the present Committee cannot claim the credit for the planting of the present trees which are flourishing in the Park, it is obvious that some great care has been taken to shape and generally maintain them. From inspection, the impression was gained that too much emphasis had been placed on the importance of organized sport and provision of facilities therefor, but it cannot be denied that in the work of development that has been done, the Committee has attained its objective in serving the purposes for which the reservation had been made.

5.8. Throughout the Committee has been active to satisfy the need for the usual amenities to be found in a Public Park. It has provided a building for a first class restaurant

for users of the Park. Whether this restaurant has an independent status to the Park will be considered later. Equally, it has provided comfort stations at convenient positions in the Park area. Whilst it has allowed one restaurant and a bandstand to fall into decay, it is desirous of replacing the former, whereas there appears to be no pressing demand for the replacement of the latter structure.

5.9. A further achievement of the present Committee has been the conduct of the golf course as a public course since 1947 when it was taken over from a private club. The main burden of this control has been in the hands of a sub-committee headed by Mr. M. R. McKenzie. It has been extraordinarily successful and now affords quite a handsome revenue to the Committee. It is apparently well conducted and adds quite a picturesque green area at the eastern side of the park.

4.10. The claim was made in the Press in the thirties that the Park was among the foremost playing areas in any big city in the world.⁹² It has lost none of its reputation in this decade by the work of the present Committee, but on the contrary, during that period, efforts have been made to build up its reputation further. Indeed, it was a part of this desire for an international build up that the Chairman urged that motor racing should be permitted without any conditions attaching thereto. Even though the Committee be denied this concession, the Park has lost none of its reputation as a sports centre by the work of the present Committee. There are many other achievements claimed by its counsel but besides catering for sport, the Committee has maintained it as a showpiece and, to adopt Mr. Bridge's opinion - "It is a very beautiful park".⁹³

5.10. What then have been the criticism of the Committee in its management and control. Unfortunately, the Board

had before it only one legal representative who was specifically briefed to be critical of the Committee's activities and in his final address he stated, "Let me say at the outset, that the Council of Progress Associations does feel that the Committee of Management has done very good work, very good work indeed. It feels that Senator Kennelly has devoted a lot of his own time to what he believes to be the interests of the public and has achieved a great measure of success in what he set out to do, and none can deny that, whatever it represents, Albert Park today is a thriving business".⁹⁴ Save for the latter part of this comment, no one who listened to the testimony of 49 witnesses could fail to agree with the early part of the utterance. The latter part, however, insofar as it implies commercialisation, was put into the forefront of the criticism of the Committee of Management and it should now be considered. As has already been pointed out in the legal considerations above, some commercial enterprise is validly allowable in the Park, if it were ancillary to the proper enjoyment of the reservation for the purposes for which it was reserved. From earliest times of its existence, even prior to reservation, there were boathouses being conducted by licensees for reward. No criticism was, and because of experience in other sites, could be levelled against the existence of private boat hire businesses. Also, there was, and could be, no criticism levelled at a practice which is common in all parks of licensing vendors of refreshments. Similarly, arrangements were made for various persons to receive some proportion from the fees paid for tennis and no one has, or can, complain about that. It must be with respect to other activities that the criticism is levelled.

5.11. There are three activities which have either come into existence during the life of the present Committee or

94. Mr. Galbally's address T.2489.

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alternatively been planned during that period. These are Rob's Cafe, night golf and the Bowling Alley. It is appropriate that each should be considered. Rob's Cafe was built at a cost of £30,700 and £12,988⁹⁵ further extensions are being made at the present time. A licence is being sought under the Licensing Act and a high class restaurant has been established. The character of the building and business seems to go far beyond the needs of the users of a public park. Although Mr. A. J. Jones had some difficulty in defining the limits of the kind of refreshment booth,⁹⁶ he was on reasonably sound ground when he objected to a fully licensed restaurant as an amenity required in the Park.⁹⁷ As has been pointed out above,⁹⁸ it is a question of degree in each case. Prior to the erection of Rob's Cafe, there had been a small refreshment kiosk run in conjunction with the Golf Course. It had outlived its usefulness and the Committee decided to build another to replace it. Just prior to this decision being made, a project to build a drive-in restaurant off Queen's Road was abandoned because the Lands Department has refused its approval. Such a drive-in restaurant could not have validly been supported as an "improvement for the purposes of the Park", but in rebuilding the outmoded kiosk the idea of a drive-in restaurant was incorporated into the plan. To replace an existing amenity was obviously within power; the question arises, however, whether the Committee was justified in building this restaurant with the various added features, and whether it can be justified under such guise. From the viewpoint of income earning, doubtless it could be justified. The Committee received 10% of its capital outlay as rent (no value being taken of the ground value) and the receipts of the golf course increased by £3,000-£4,000 per annum.⁹⁹ Undoubtedly it was

95. T.2328, 96. T.2248-9.

97. See also Dr. McAndrew of Landscape Preservation Council T.1507.

98. See para 3.13 supra.

99. T.367, T.2330

intended to provide an amenity and one of high standard. But that portion of the Park now with its advertising signs, does take on the appearance of an independent business serving not only users of the Park, but the many people driving along Queen's Road. Mr. Cullity urged that persons merely dining in such surroundings would obtain the benefit of the beauty of the park, just as any other person having passive recreation in the Park. True though this may be, the cafe does give color to Mr. Galbally's charge of commercialisation of the area.

5.12. Night golf was introduced about five years ago. The Committee built the necessary hutment and has received £500 per annum rent ¹⁰⁰ from this source. It has not been a success. ¹⁰¹ It has been conducted throughout essentially by private enterprise and although notices have been placed around the Park prohibiting golf practice, ¹⁰² this has not enabled the golf range to become a great success. It should be here noted that objection to these notices has been made ¹⁰³ by one correspondent to the Secretary of the Board. From the Lands Department files it did appear that golf practice was allowed in the Park, but always only on payment of an annual fee. It is within the power of the Committee to regulate where and under what conditions golf practice should be allowed and probably the best method of doing so, was to give a franchise to some licensee. Indiscriminate use of the Park for the purpose would be dangerous to other users of the Park and a source of damage to soil surfaces calling for continuous and expensive maintenance. To keep it within proper bounds and to police the control economically, the Committee probably adopted the most reasonable course. Whilst it gives an air of commercialisation, in fact it is a realistic method of dealing with one aspect of the

100. T.279
 101. T.799
 102. T.282
 103. E.76, T.2313-4.

activities in the Park.

5.13. The Bowling Alley project was one of those matters which occurred just prior to the setting up of this Board of Inquiry. Whilst it could not be predicted that it was this matter which was the cause of the inquiry, counsel assisting, in his opening at the beginning, rightly asserted that some close examination should be given to this project.

It was established in evidence -

- ling
alley.
- (a) that for some time the Committee had formulated a plan of extending the indoor sports centre;
 - (b) that in September 1960 there was included in such plan, the establishment of a bowling alley;
 - (c) that the Chairman was approached in or about May 1961 by a representative of Bowling Centres (Holdings) Ltd;
 - (d) that the Chairman waited on the Minister of Lands, and explained the matter to him and in the presence of the permanent head, the Minister made no objection to the project and the permanent head opined that "it looked all right to him"¹⁰⁴ Senator Kennelly confirmed the result of this interview by letter, dated 26th May 1961;¹⁰⁵
 - (e) that armed with such approval, the Chairman, although no notice was given thereof on the agenda of the meeting, obtained on the 5th. June 1961 the approval of the Committee to the project,¹⁰⁶ and together with the engineer, was authorised to negotiate with Bowling Centres (Holdings) Ltd.;
 - (f) an agreement was executed by representatives of the Committee and the Company on 19th June 1961 and the Chairman reported its execution to the Committee on 3rd July 1961, and the Council members of the Committee reported it to the South Melbourne Council on or about

the 5th July 1961;

- (g) without seeking the advice or approval of the Town Planning Authority, work commenced immediately on removing ^{some 107} 46 trees, levelling the ground and preparing the ditches for footings;
- (h) during this period of the inquiry, work of preparation stopped and approval for the erection of a building was sought by the Company from the Town Planning Authority and this permission was refused;
- (i) an appeal from such refusal apparently can be made to the Minister administering the Town Planning Act.

5.14. If the project were to proceed, certain unusual features emerge, viz:

- (a) a novel recreation activity for private gain would be set up on an area of Crown lands reserved for a Public Park;
- (b) it is not, like Rob's Cafe, even colorably ancillary to the present order, or can it be explained, like the Golf range, as a happy solution to regulating the area of the Park;
- (c) the site is tied up for the very long period of 25 years with an option for a further ten years.

5.15. Although there have been commercial pursuits in the Park, they have all been reasonably related to the purposes and enjoyment of a Public Park. In the case of the Bowling Alley, a large structure costing £200,000 (to be borne by the Company) will be erected. It is difficult to see that this will be an improvement for the purposes of the Park. The promoters desire, no doubt, to put it on the site for business gain. It would be essentially an example of commercialisation of this part of the Park. From the experience of the boat hirers, this argument is more emotional than rational if the bowling alley could be otherwise

justified as an ancillary. The arguments raised by Senator Kennelly were that it will assist in making Albert Park one of the best recreational centres in the world; that that can be done without any cost to the Committee of Management, that the Committee will have a building worth £200,000 in the Park to form part of its Capital assets; that bowling alleys are becoming quite popular throughout south-eastern Australia; that there is no sporting organization for the conduct of such alleys; and that in consequence in licensing commercial interest to run the alley, the Committee would be able to obtain a handsome income of £5,000 per annum for the use of the site, at the same time providing this popular recreation. These are potent arguments.

5.16. The objections to the project are -

- (a) it would tie up an area of the Park for a long time during 24 hours of the day;
- (b) it would assist in defeating the overall plan of development for Melbourne in the reservation of Albert Park as a public open space;
- (c) although the land is not alienated from the Crown, the contractual right to be conferred means that for a period of 25 years or more the public would be denied access to the area which would not be negligible nor would the period of such denial of access be negligible;
- (d) if a policy were adopted of allowing this type of exploitation of the park lands to continue, there seems to be no real objection to further taking of the parkland for structures for iceskating, indoor lacrosse, indoor tennis or indoor athletics, all of which activities have their popular following on the Continent of North America;
- (e) as at the present time there are no economic reasons why it should be necessary for the Committee to receive revenue from this source. Indeed, as between the choices of revenue raising by motor car racing on the one hand, or

Arguments
for the
Bowling
Alley.

Objections
to
Bowling
Alley.

Contractual.

structures on the other, Mr. Bridge's views on this appear the more acceptable. If in the future, economic reasons demand another source of revenue, it would be probably better that the Board of Land and Works might permit the motor car racing under proper safeguards and conditions for one or two days in the year, than permit further structures.

- (f) The picturesque nature of the Park has been and would be spoilt by the erection or continuance of too many buildings, and in particular, in the confined area on the north-eastern side, and by the destruction and sacrifice of natural features, like trees and grassy glades.

5.17. Weighing all the argument for and against, it seems on balance that the Committee should not have entered into the bowling alley project. Whilst the income was tempting to give security in the future, the income was not urgently required, the project was of dubious legal validity, and access would have been denied to the public of a not negligible portion of the area of the Park, for a not negligible period of time. When there is added the sacrifice of public open space in picturesque surroundings, it seems the preponderance of argument should have led to the rejection of the project. The Committee can find no comfort from the approval of the Lands Department, since if one were to take a legal approach alone to the problem, the approval could not validate any purported exercise of power where it did not exist and if one were to take a realistic approach, the Committee alone had the intimate knowledge and responsibility of management, and it must bear the ultimate burden of responsibility for the decision.

5. 18. Allied to the above criticism of commercialisation was a second criticism that the Committee was too nearly

108. See para 4-5 above.

109. E.70 T. 2285-6. T.1561 T.2420

concerned with the raising of revenue in the Park. Undoubtedly, the impression to be gained from the evidence was the Committee was always alive to the possibilities of increasing its revenue; yet the evidence never showed that anybody, Club or association had been unjustly treated. Indeed, the evidence rather established that the Committee was very sympathetically inclined to assist the various occupants or licensees who were having a hard time. It was generous in its assisting unincorporated bodies with loans at very low rates of interest and it had taken undoubted legal risks in many of these transactions. Whilst one cannot find any defined policy, the Committee must have greatly encouraged many of the organizations by its generous treatment. Suggestions were made by witnesses that the Committee should not have bothered very much about revenue, that the Government, the ratepayers or some other source would provide. This is both unrealistic and unfair. The history of this Park has shown that with different governments and different municipalities there was a variable generosity. At this time, taxes and rates are already high and it is not unfair to ask that these sportsmen who obtain the greater benefit from the use of very valuable public land should bear some, if not the greater, burden of the cost of improving and maintaining such area. No charge is made for those who use the Park for passive recreation, but even in certain English and Continental Parks, it has been accepted that the use of seats may be charged for.

5.19. Also closely allied to the criticism of over commercialisation is the criticism that the Committee has allowed too many buildings to be erected in the Park. When dealing with the legal considerations, it was pointed out in judicial dicta that this is a matter of degree. Structures necessarily impede the free access by the public but so long as they are ancillary to the purposes of the Park, they increase the enjoyment of the user of the Park and, therefore, may be

justified as a proper exercise of management. But different considerations may apply to the indoor centres, Rob's Cafe, Squash court, grandstands, walkers' dressing shed and night Golf.

5.20. Something has already been said about the Indoor Centres. The structures themselves were built by the Commonwealth, so that on the Commonwealth vacating the area, the Committee was faced with the decision as to whether they were to remain or be pulled down. The Committee made the only businesslike decision to allow them to remain and the present use of them justifies the Committee's decision. They are reasonable income producers whilst affording facilities for healthy recreation at all hours. They could not have been justified as new erections by the Committee, but faced with the decision of whether or not to pull them down, the Committee was faced with a difficult task and its judgment has been borne out.

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Cafe and
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courts.

The question of Rob's Cafe has also been discussed from other aspects. From the point of view of the building itself, some buildings were required for the golf course and a refreshment kiosk. Save for the amount of capital spent on the project and the size of the building, no one can criticise its erection as being redundant to the needs of the Park. The criticism already made is to question whether this restaurant has not assumed as it was intended a status independent of the Park.

The present criticism is that there are too many buildings but this cannot be sustained so far as Rob's Cafe is concerned. It simply replaced an earlier structure that was brought there as a refreshment kiosk about 1947. The squash courts have also been referred to. These are being erected as part of the Sports Centre planned by the Committee. Mr. Bridges criticizes the siting of these courts. He does not criticize the architectural design or does not say that the building should never have been built. The Committee can be justified

110. See para. 5.5 supra.

111. See para 5.11 supra. See also T. 1546

struc-
-tion of
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-stands.

in their siting by a desire to utilize that portion of the Park as a Sports centre. But it is rather difficult to justify the expenditure of a large capital sum on a building in a Park, well suited and equipped for outdoor passive and active recreation and the function of which must primarily be to remain a public open space in a densely built up area. The mere fact that a decision was taken to retain renovate and convert existing buildings hardly justifies further buildings in this area. It now means that the character of this 10 acres of the Park has changed from an open space to a built up area. With the Girls' High School to the east, it means there is practically a line of buildings from Queen's Road for about a quarter of a mile along Albert Road, veiling the view of the Lake and Park to residents facing the Park and to passersby in Albert Road.

5.21. The Committee has allowed a grandstand to be built on the western side of Oval No. 18 set aside for the use by Hakoah and South Melbourne-Hellas Soccer Clubs. The siting of this stand is in an area remote from the centre of the Park. Its appearance has been criticized by Dr McAndrew of the Landscape Preservation Council, and Mr. Hepburn, the planning officer of the Metropolitan Board of Works, points out that a grandstand is a substantial structure which can alter the character of an area. On the other hand, he agrees that a grandstand is an amenity reasonable for the full enjoyment of the Park where organized sport is conducted. He said it was one of degree. In deciding to erect a grandstand to assist the Soccer Clubs, the Committee was enabling the oval No. 18 to be more usefully enjoyed, and subject to the question of enclosures to be considered later, at the time of erection of the stand in this area, there were not too many structures in that part. In fairness to the Committee, it should also be pointed out that for many years there have been grandstands

112. E.51 T. 1207, E.58, T.1501-2.
113. T. 1203.
114. T. 1209.

erected in the St. Kilda and South Melbourne cricket grounds and these had been accepted as a proper development of those areas. Of course, as Mr. Hepburn has pointed out, it is a matter of degree and the Committee did not go past the point where it was reasonable to construct the grandstand.

5.22. The committee allowed the Victorian Walkers' Association to erect a dressing room and headquarters for its activities. It means that this Association does not share these amenities with others, but for 24 hours of every day a privileged class which in itself does not use the room continuously on every day, deprives the public of access to this area. There is the question that the Association is a properly organized body of responsible people. But is this the kind of occupancy whereby some section of the community can obtain the privilege to the detriment of the rest of the community. This is a matter requiring some consideration and will be dealt with in Part 9 of the Report. The siting of the Walker's building is at the rear of the Basket Ball Centre and with the last existing buildings so near, the building does not affect the user of the Park very much.

5.23. The Night Golf Range has already been discussed and justified on the ground that it regularises a use of the Park which if indiscriminately allowed, could be a source of danger and the cause of high maintenance. The buildings erected for the range were really an extension of a Comfort Station and dressing shed on the south-west side of Ovals 15 and 16. The building was provided for the proper conduct of the Golf range and fitted in with the other amenities provided. Whilst it is another building on the area, its erection and use are necessarily incidental to the proper enjoyment and control of the Park.

5.24. Allied to the subject of buildings, a criticism was levelled at the Committee for permitting the enclosure of the Soccer ground. As has been pointed out in the history

of the Park, a feature of the Park, even before its reservation, was that there were at least three substantially enclosed areas¹¹⁵ in the reservation. The main lesson, however, to be learned from these grounds is the way in which they have evolved from areas merely fenced off by post and rail fences (either to keep goats out or sheep in) into very substantial enclosures with high walls, in places hideously surmounted by barb wires, and expensive stands and dressing rooms. As has been pointed out, gates are left open to satisfy the legal fiction that the public have free access thereto. To adopt counsel's submission which is so obviously correct, it might be better in future if this fiction of public availability were abandoned so that the true extent of the public's loss could be frankly considered and weighed. There is, nevertheless, a warning to be found even in the actual state of affairs as they exist in these grounds. With their evolution, the grounds have also developed into built up areas surrounding the open space of the ovals. Besides detracting from the appearance of the Park, they certainly alter the character of the Public open space that should exist in this Park.¹¹⁶

4.25. The only area permanently fenced by the Committee in the Park is the soccer pitch on Oval No. 13. Reference thereto has already been made with respect to the cycling track. The history of the enclosure as developed in evidence was not clear, but it would appear that from the fact that the area was bound on the east and south sides by the boundary fences with the Commonwealth and on the west by the railway boundary fence, it was only on the north side that the area was open. Of this northern side a portion of it was block off by the toilet block and the golf range building. There was about 50-60 yards from the western end of these buildings to the railway line. Some years ago a high cyclone fence was built to within 30 to 40 feet of the railway line and about eighteen months ago

115. See Para 2.21 supra.

116. T. 1214

this 30 or 40 feet was built.¹¹⁷ The history of this fence does not reflect any great credit on the Committee and was one of the few matters upon which any criticism of its methods of transacting business could be made. On 2nd. February 1953, on the motion of Senator Kennelly (who left the Chair to move the resolution) it was resolved that the bike track be enclosed by a fence. There were two dissentients. On 23rd. February 1957, notice of motion was given by Cr. Barry that this resolution be rescinded. On 30th. March 1953, the rescission of the earlier resolution was passed, with one dissentient. The minutes record "The Chairman stated that politics had intruded into Committee affairs and he had been instructed to vote for the rescission."¹¹⁸ Despite this resolution, steps were taken to erect a fence practically around the area and, again on 20th. March 1957, the minutes of the Committee show that a refusal was given to the Soccer Club to enclose the ground by putting up a gate and turnstiles in order to charge admittance. When questioned about the erection of the fence, Mr. R. L. McKenzie, the Assistant Secretary, said in evidence, "I would think the majority of the Committee knew about it, but it was never brought into the open at a Committee meeting. Q.- We could not find any minute on it? A. I think that was deliberately done."¹¹⁹ Senator Kennelly swore that there was no deliberate intention in not making a formal decision about the full enclosure of the Soccer (or cycle track) area.¹²⁰ Be that as it may, the area has been practically enclosed, charges are being made for admission and on the faith that charges can be made, the Soccer Clubs have entered into agreements with the Committee which entail substantial obligations.¹²¹ The implications arising from this

117. T. 1722.
 118. E. 77. See also T.333 T.2341-2346.
 119. T. 912
 120. T. 2345
 121. E.9 E.10.

enclosure
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recital of facts, show that any decision to enclose ground for sport or alter the Park is an explosive one and the Committee was timorous of recording any plan or decision on the matter of enclosing the ground. It was claimed in evidence that even at the present time, because of the absence of a gate, there is no complete enclosure but for the same reasons which prompted the comment on the cricket grounds above, this may be regarded as a fiction. There is no doubt that in the area occupied by the Soccer Club, the public has not an unimpeded access to that part of the Park. By leaving a gap in the fence as evidence of free access, another fiction in effect is created. The purpose of the enclosure was to assist the Soccer Club to be able to charge admission to their spectators. The economic advantage of this to the Soccer Club was discovered in the evidence of its representative that if "you take the hat round you might get £6; if you charge at the front gate, you get ¹²²£30.

5.26. The Committee has been criticised for failing to beautify the Park. In so far as the criticism goes beyond the erection of structures and the destruction of natural features therefor, such criticism cannot be justified. Constant maintenance work, installation of watering and drainage facilities, mowing of grasses, levelling of fields, protecting young trees by guards and low fences and the planting of innumerable trees negates this criticism. No less than ¹²³160 trees were planted in the year 1960-61. What with vandals careless motorists and difficulties of soil, it has been necessary to replant the trees on the eastern side of the Lake no less than three times. In order to protect them, a low fence had to be erected at considerable expense along ¹²⁴the whole length of Lakeside Drive. Mr. Logan, a local resident, has described the destruction of a number of trees

122. T. 1721
 123. T. 1013. T.264. T.1544
 124. T. 1571.

but agreed that there had been in the last two years substantial plantings.

5.27. The Committee has also been criticised for failing to plan ahead or to draw up an overall plan of development. It was freely admitted that no planning, other than to make Albert Park an outstanding sports centre, had been made. But it was excused by submitting that no plan for the future could be made because of many factors, not least important of which was the problem of proper financing and the likes and dislikes of people of the future. From the examination of the expert witnesses on planning, Messrs. Pearce and Hepburn it was apparent that town planning was not an exact science and its demands must vary from period to period with changing conditions in transport, living conditions, mounting population, density and many other factors. Planning must of necessity be difficult. But one matter does emerge. This area is geographically situated in such a position that it is absolutely necessary to ensure that its character as an open space is not drastically changed. In so far as the erection of any buildings may be permitted, there is an insidious growth of change. That this diminution in open space was detrimental to the social life of the Community was fully explained and justified by the evidence given by Messrs. Pearce, Hepburn and Bridge, all with a architectural experience and skill and by Dr. McAndrew of the Landscape Preservation Council. Whilst one should not slavishly follow any design or principle, nevertheless any Committee of Management of this area, in the present condition of the metropolitan area, must realise its responsibility to preserve this area as "lungs" to the densely populated areas. This should be the basic principle and insofar as the Committee has departed from it by allowing buildings to be erected simply for economic reasons rather

than as a necessary adjunct to the use of or enjoyment of the Park, it can be validly criticised for failing to plan. The Royal Victorian Institute of Architects in a written submission stated "The Institute is concerned that Albert Park, one of Melbourne's great parklands, is being increasingly used for various forms of recreation requiring buildings or enclosures without reference to any published policy or plan.¹²⁷ The inquiry was the first public medium by which the Committee's future planning could be discovered by such a body as the R.V.I.A. Mr. Hutchinson of the Council of Progress Associations made a similar complaint on behalf of his Association.¹²⁸ Summing up the criticism on this aspect, it may be said that the Committee, so far, has failed consciously to adhere to any plan to limit building structures or enclosures. Nevertheless, with the exception of the erection of the Squash racket courts, the enclosure of the Soccer pitch and the erection of the grandstand therein and the projected Bowling Alley, the Committee has not in fact had any cause to consider what limits should be placed on a building programme.

5.21. Closely related to the abovementioned criticism is the further criticism by Mr. Hutchinson that provision should be made for a fuller disclosure of the activities of the Committee. The gist thereof was that the public was presented with a "fait accompli" before it knew what was happening or intended to be done. If the public are the "beneficial occupiers" of the Park, then of course the public should be informed of what is going on. But one has to be practical. Parliament has seen fit to establish administrative set up whereby a Committee of Management is appointed to MANAGE. If it fails to do this adequately and fails to recognise the interest of the public, it can be removed. It is in some respects similar to a Board of directors of a Company. So long

127. E.68.
128. T.1592-3.

as it is reasonably representative of the public and consists of reasonable responsible individuals carrying out their functions, the community must have confidence in its management. The observable results of mismanagement or indolence should be the best indication thereof to any interested member of the public. On the other hand, the Committee must each year give an account of its financial transactions to the Lands Department and there seems to be no reason why these should not be made available to any member of the public, so that he can be informed of the financial position of the Committee and judge whether observable results are consonant with the stewardship of public funds.

5.29. Mr. Hepburn in his evidence expressed the view that the tendency of the present Committee was to place too much emphasis on the sporting side of the Park. It has undoubtedly been the policy of the Committee to encourage all kinds of organized sport played in an Australian community. So long as the emphasis was on outdoor healthful recreation, no person would cavil at a Committee of Management of a Public Park using its property, real or personal, to encourage such user.

5.30. There were a number of minor criticisms of the administration made by Mr. A. J. Jones, but when analysed they appear insubstantial and do not call for any further comment. Likewise there were complaints on the administration by the Victorian Model Aeronautical Association, the South Melbourne Amateur Cycling Club, Albert Park Yacht Club, Speed boat proprietors, in relation to the various subjects, the nature of which may be guessed from the names or description of the complainant. These were all investigated, but none of the matters examined showed in any way that the Committee was either unjust or unreasonable in its activities. It was fairly obvious in some of the complaints that the personality of the

129. T.1237

130. E.53, E.69. T.1299-1336. T.2238 et.seq.

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Chairman had irked the complainant. Having regard generally to the fatuous nature of many of the complaints, one can well imagine the resentment of the Chairman. With respect to one of these complaints, he himself said "I have been a bit tough. I know I have been tough and I have had to be. I have had to try and get order out of chaos"¹³¹. Having seen and heard the complainants in the box, particularly with respect to the use of the Lake, there was very little sweet reason shewn by them and it must have required considerable skill and understanding on the part of the Chairman to obtain organization of competing interests and to use his own expression, it must have, at times, required the manager to get "tough" to get proper order.

5.31. Mr. Cullity, on behalf of the Committee, submitted a list of things done by the Committee with respect to the Lake and but for the criticisms/as to the administration of the Lake, these might have been disregarded. He pointed out, however, that this Committee had, despite many and differing interests, rationalised the use of the Lake. First and foremost, the Chairman had brought together all the various bodies using the Lake and created a Lake Advisory Committee to assist the Park Committee in the management and control of the Lake. By this method, the claims of all users were fully appreciated and weighed and control of the aquatic recreation became simple. All the buildings lining the lake on the north-west were put back from the edge of the Lake at a prescribed distance and brick frontages erected. This improved the appearance considerably. The banks were improved, an island demolished and a concrete walkway around the lake commenced. The problem of the weed was attacked. Advice was sought from C.S.I.R.O. and State Rivers and Water Supply Commission. Valuable equipment was purchased and men employed to cut the weed down. Unauthorised persons were prevented from using the Lake for

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aquatic sports. Mt. Cullity submitted that despite complaints, the efforts to maintain, improve and control the use of the Lake far outweighed any criticisms of the administration therein. The evidence clearly established this submission. Both the Committee and the users of the Lake unfortunately have had, and apparently will have for a long time, the vexing problem of this weed in the Lake.

5.32. It is now necessary to consider the methods and system used by the Committee of Management. It has met regularly once a month (except January) usually on a Monday afternoon and generally the meeting occupied the whole of the afternoon.¹³² As a rule, reports were received from the Engineer and Mr. M. R. McKenzie, and the substance of the minutes which were carefully kept by the various part-time secretaries, were, in the main revealing of the decisions made by the Committee and the great amount of work which had been done by the Chairman, Mr. Drew, the Engineer and Mr. M. R. McKenzie. Of course, by law, as has already been pointed out, it was necessary for a majority of the Committee to exercise any function of the Committee. So far as can be discovered from the records, with one exception,¹³³ to which attention has already been drawn, this requirement was observed. Generally, if the Chairman carried out some form of activity, on behalf of the Committee, it was either authorised in advance or afterwards ratified. On questions of principle, the members of the Committee always seem to be consulted and if the matter were controversial, the members freely availed themselves of the opportunity of discussing it with the Lands Department. The permanent head, Mr. Klenner, accurately stated the role of the Committee and the department when he said in evidence - "Well I see them (i.e. members of the Committee) this way: that they are a body of civically minded citizens who are interested in the

Methods
system
the
Committee.

132. T.93A.

133. See para. 5.4 Note 80 supra.

Park and for that reason they were appointed as the Committee of Management. They are expected as such to carry out the administration and development of the Park within their Regulations and in a sense you could say that they are a Government-appointed body of management to carry out the work in the Park ... The function of the Lands Department ... is to see that the appointments of the Committee of Management are properly done and that necessary Orders-in-Council prepared and published in the Government Gazette, and to see that Regulations are framed within which the Committee is expected to do the management of the Park.¹³⁴ Despite this definition in function, members of the Committee did seek the approval of the Department to many decisions of the Committee in carrying out its function of management.

5.33. The accounts of the Committee were fairly straight forward and the books were kept quite efficiently by Mrs. O'Brien who did the office work for the Committee. The Annual Statements were prepared by Government auditors.¹³⁵ The Committee also took care to see that its assets and all appropriate risks were covered by insurance.¹³⁶ No inventory of assets was prepared for many years, but shortly after the appointment of the Secretary-manager, in accordance with instructions received by him on the engagement, he prepared a statement.^{136A} The minutes of meetings were kept by the part-time secretaries, Messrs. Northey and McKenzie, in a very satisfactory manner. After Mr. McKenzie's resignation in December 1958, they were satisfactorily kept by Mr. O'Brien, who acted as Secretary. On the appointment of Mr. Burke as Secretary-manager, he has kept up the standard. Prior to meetings, agendas of the meetings were prepared by the person carrying out secretarial ~~work~~

134. T.1119.

135. For copies of the Annual Statements see E.5, E.50, E.56.

136. For list of insurances, see E.81

136A. E.80.

duties. One of the weaknesses in the system was disclosed in these documents, because the Secretary would not know what the Chairman wanted to bring up. In consequence, the two matters, the arrangements with the Bowling Centres (Holdings) Ltd. and the appointment of the permanent secretary-manager, were not listed for discussion on the agenda. It was unfortunate that members had not been warned on these matters prior to the meeting. It is not and it was not suggested by anyone in evidence that any different result in either case would have followed, had warning been given on the agenda paper. All cheques were signed by the secretary for the time being and countersigned by the Chairman. Accounts were only paid after they were checked and vouched for by the Chairman and payment was authorised by the Committee. From the evidence it appears that the secretarial and accounting work of the administration of the Park was efficiently carried out and a perusal of the various records produced at the hearing verified the oral evidence given as to their suitability and efficiency.

5.34. The Committee employed adequate staff to carry out the work which was required to maintain the Park. So far as the evidence disclosed it, this Committee seemed to inspire loyalty and good service from its employees. Of course, the bulk of the responsible managerial work was done by Senator Kennelly who must have spent much more time than could possibly have been expected from a Chairman. It was not reasonable to expect him to continue to give further time and energy to the task. Accordingly, it was decided, as had already been observed, to appoint a Secretary-manager. This decision was clearly right. As counsel assisting pointed out, the method of his appointment, however, invites critical examination. It is sufficient to point out that Mr. Burke

137. T.171-2.

138. T.631. T.6.33

was appointed by the Committee, after he had been named by his father-in-law as suitable, and interviewed and recommended by a sub-committee of three appointed for the purpose of negotiating with and assessing the worth of Mr. Burke. His appointment in these circumstances raises three questions -

- (a) should the appointment have been filled only after applications had been publicly invited?
- (b) did the Chairman's contribution to the work of management justify the appointment of a person to whom he would be well disposed and who would co-operate with the Chairman?
- (c) was the salary offered excessive?

5.35. Taking each of these matters in turn, it was apparent that appointments to similar offices in other public reservations had been made without advertisement. Secondly, it appeared that the appointment had been offered to Mr. Cox, an experienced member of the Committee, but rejected. Thirdly, the men who recommended the appointment were sufficiently independent not to be affected by the relationship of the applicant to the Chairman. Nevertheless, by such method of appointment, it meant that many members of the community who may have been better qualified and desirous of such appointment, were denied knowledge of it. Fourthly, it does not mean, however, that there may be a better qualified man than Mr. Burke to fill the appointment. Having regard to the salary and the nature of the duties, the Committee nevertheless should have taken the precaution of advertising the position. It would have removed any accusation of partisanship in the appointment and if Mr. Burke had been appointed in competition with other applicants, the prestige in his appointment would undoubtedly be higher than

appointment
about
advertising
planned.

having been appointed without competition.

5.36. It was suggested by Mr. Telford (a member of the Committee, who it will be remembered was only appointed in 1960 after he had been asked by the Minister to report anything of a controversial nature to the Lauds Department) that the Chairman was entitled to some help and that he was entitled to someone who would do what he wanted when he

Telford's
justifi-
cation
of Mr.
Burke's
appoint-
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wanted it done and someone on whom he could thoroughly rely. Mr. Telford conceded that he thought differently to other members but he regarded it as reasonable and in accordance with the principles in running his own business. The difficulty in such arrangement, however, is that the appointment of Mr. Burke was that of a young man who will be working not only with the present Chairman, but possibly many chairmen and members of the Committee. Whilst Mr. Telford's approach is understandable, it would not be a wise method of dealing with public appointments and, therefore, should be rejected as a justification for Mr. Burke's appointment.

Salary not
excessive.

5.37. The last matter for consideration is whether the salary was excessive. From a description of the hours to be served, the demands on his time, the nature of the problems to be solved and the grave responsibility in handling large sums of money, the salary offered to Mr. Burke was not extravagant, but would be only a reasonable reward if Mr. Burke carries out his work with the same devotion and pertinacity as the Chairman.

5.38. The Committee has, however, appointed Mr. Burke on probation, and, therefore, if by future experience, he does not measure up to the requirements of the job, then it is within the Committee's power to dispense with his services. It is the responsibility of each member of the Committee to consider carefully the confirmation of appointment, and only

after he has seen how Mr. Burke has performed his tasks during the probationary period. Although such an appointment was made without advertisement, the Committee can ensure by observation that its appointee has the necessary qualifications and qualities for the task of Secretary-manager. If this duty is performed conscientiously by each member, without fear or favour, the full Committee can assess whether the Chairman's and sub-committee's recommendations were justified. If each member does this, then the failure to advertise the appointment is not critical to the future welfare of the Park.

5.39. In concluding the report on the first term of reference, it may be summarised in one or two sentences.

Whilst in several regards its work can be criticised, and in particular, in regard to the two matters which occurred just prior to the appointment of this Board, its achievements as a Committee far outweigh any weaknesses, either in its administration or management or the methods adopted therein. It would be surprising if some errors in judgment were not committed. But really, it is surprising the amount of time and effort that has been put into the conduct and control of Albert Park by the members of the Committee of Management, and in particular, by Senator Kennelly. The results of their labours have, during their management, been distinguished by successful development and management of the Park for the furtherance of healthy recreation, without at this stage decreasing in any measurable degree the open space available as "lungs" for the inner metropolitan area.

6. REGULATIONS.

6.1 The second term of reference is to report on the regulations relating to the management and control of the Park, the adequacy and suitability thereof to preserve the interests of the public and whether the powers thereof have been exceeded by the Committee in any and what respects. Attention has already been paid to the regulation making

Summary
Findings
First
Term of
Reference.

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141

power and the powers of the Committee thereunder. Now this term of reference limits the report to the following:

- (a) It is only those regulations which relate to management and control which must be considered;
- (b) The consideration thereof is limited to their adequacy and suitability;
- (c) The consideration of their adequacy and suitability is limited only in relation to the interests of the public; and
- (d) Finally, it is necessary to discuss whether the powers conferred by the regulations under consideration have been exceeded.

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6.2. The existing regulations which relate to management and control of the Park are reasonably adequate and suitable for an open park some parts of which may be enclosed and admission charged at certain specific occasions. Regulation 2 specifically proclaims that the Park shall be open to the public free of charge. It then proceeds, however, to make four exceptions to this provision, viz:

- (a) As it may be otherwise provided in
 - (i) Regulation 2, or
 - (ii) any other regulation, or
- (b) On such days, not exceeding 26 in any one year, when a portion of the Reserve may be set aside, or
- (c) The sites of the St.Kilda and South Melbourne Grounds where a charge may be made on not more than 72 days per year.

It will be seen that this regulation does not cover the activities of those sporting centres or the soccer ground where entrance charges were made. Despite the provisions of the present regulations, the various organizations were allowed to make a charge without any objection by the

141. Para 3-5 supra.
142. E.8.

Committee which took a realistic view of the situation, knowing that the organizations had to charge in order to pay the rent and repay other monies owing to the Committee.

6.3. Regulation 8 provides that no person WHILE IN THE RESERVE shall without the consent in writing of the Committee first obtained, occupy or use any building, house, booth, shed or any other structure therein or erect or place therein any building, booth, shed, stand, etc. or other erection or obstruction of any kind whatsoever or in any way enclose any part thereof. Various submissions were made as to the effect

Committee's
power to
consent to
occupation.

of Regulations 2 and 8. Obviously the primary question for consideration is what would be the effect of the Committee giving a consent in writing as provided in Regulation 8 (or in Regulation 1). The answer to this question is that the consent in writing makes lawful what would otherwise be unlawful. It, therefore, follows that the Committee may authorize the occupancy or erection of a building unless there is some other regulation prohibiting it. Regulation 2 provides for free access but that freedom is subject to the exceptions therein contained or provided IN ANY OTHER REGULATION.¹⁴² It was submitted by counsel for the Committee and it appears correct, that if there were any implications arising from Regulation 8 which permitted lawful erection and occupancy of a building, then the freedom of access of the public to the portion of the Park upon which the building was erected or occupied must be subject to the rights of the builder or occupier as consented to by the Committee.

Remembering the power of the Committee, apart from the Regulations, to manage and improve the Park for the purpose of its reservation and the general judicial determination of the characteristics of a "public park", there seems to be no reason in law why the Committee by the exercise of such

142. See para. 6.2(a)(ii).

statutory power apart from the Regulations cannot authorize a person to use or occupy a building, to enable the greater enjoyment of the Park.

ting
hiring

6.4. Regulation 10 deals with the renting or hiring of portions of the Park but only on the occasions of any sports, shows, fete or similar gatherings. It confers no power on the Committee permanently to enclose any area or hire or rent such area to any person.

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irement
repair.

6.5. Regulation 18 empowers the Committee to require at any time any buildings or erections in the reserve to be altered, renovated or repaired. This recognizes that some person must have control of such building to alter it or renovate it or repair it. The obvious method of control is, of course, by occupancy.

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6.6. The Committee, by Regulation 19, is permitted to withdraw, cancel or annul any permit or consent FOR THE OCCUPATION OF ANY SITE within the Reserve, granted subject to conditions or terms of the payment of fees when in the opinion of the Committee such conditions or terms have not been paid OR FOR ANY OTHER REASON which the Committee might deem to be in the interests of the Reserve. This provision again recognizes that there may be an "occupation of a site". The obvious intention is that the occupancy should be permissive only; and the permission can be revoked at any time. Furthermore, Regulation 38 recognizes that there may be an occupation, because it provides that no person without lawful excuse shall enter any enclosure or area wherein a house or equipment is located. This presumably was to protect the boat house proprietors who live on the premises and also the Committee, which must keep its equipment in enclosed areas or buildings.

6.9. The purpose and scheme of these Regulations was to supplement the Statutory powers and duties otherwise conferred or imposed on the Committee by Sec. 221, Land Act 1958 in the following respects:

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- (a) generally, the public were to have free access to the Park, a characteristic feature of all public parks;
 - (b) that in certain excepted cases, the use of portions of the Park may be restricted or impeded;
 - (c) buildings could be built and occupied but in a very limited manner as to time; occupancy, ex facie, was to be permissive only;
 - (d) generally the permission was given to "a person in the reserve", recognizing that the permission was essentially personal to the individual and not to aggregates by unincorporated or incorporated name. (Of course, in law, by the principles of agency, an aggregate body, through executive officials who were authorized to speak for each and all of the members, could obtain permission for the individual members constituting such aggregate).

6.8. If that were the intended scheme, then the agreements for occupancy, insofar as they place liability or confer rights on the aggregate of persons in their associated name cannot be justified under the Regulations. Individual executive officers may become liable, but not the unincorporated bodies in their associated name. Furthermore, insofar as the agreements comprise a right of occupancy for a term of years, they could not by the Regulations be justified. In this regard, however, if any agreement could be shown to be for the proper enjoyment of a public park as characterised by the dicta of judges set out above, then such agreement could be justified in law under the power of management conferred on the Committee by Sec. 222(1)(c) Land Act 1958.¹⁴³ It does seem, however, that the Regulations themselves should regularize the situation that has now arisen with respect to the sports centres in particular. The nature of the amendment

143. For discussion of such power, see para. 3.7 supra.

will be developed in Part. 17.

6.9. In the course of evidence, it did appear that the members of the Committee, with one or two exceptions, were not familiar with the terms of the Regulations and in some cases had never seen them. Furthermore, it did appear from the evidence that no administrative organization was provided to police the provisions as to the number of days during which the cricket grounds in the Park could be closed to the Public. The evidence also seemed to imply that the Committee's work was not necessarily going to be impeded by any regulation, if the Committee thought it desirable to carry out some project. The consequence is that the conduct of some of the activities in the Park is not clearly within the Regulations or the Statutory powers conferred upon the Committee, and there should be an amendment of the Regulations to regularize the situation. The Committee seeks to excuse itself on the ground that the administrative procedure of amendment of regulations lags behind the realisation of projects and completion of planned works and activities. It indeed, has sought from the Lands Department an amendment of the Regulations to regularize the situations.

6.10. The most vexed problem in this respect arose from the granting of long term occupancies. In law, these cannot be justified under the Regulations, but can, if at all, be justified under the Statutory power of Management "for the purposes of the reservation". For reasons already advanced, it does not appear generally desirable to create long term occupancies, thereby parting with control of areas of the Park for long periods. It was pointed out in the hearing, however, it is both beneficial and just that a person or organization should know that he or it is granted an occupancy for a fixed period, with the added knowledge that at the end thereof this occupancy should be given up, rather than the occupation should be indeterminate. In the latter case, after

a long period of occupancy with increasing capitalisation in the improvement of the area, a prescriptive right to occupy seems to become established, and cannot without offending human susceptibilities be terminated. Of course, this view was proved false when the Committee took over the golf course, without any compensation to the private golf club. On the other hand, if there were an occupancy for a long time, even under a written agreement for a long term, there always develops the sentimental view that, irrespective of the contractual conditions, a long occupancy, with possible expenditure of large sums during such period, entitles the occupier to remain in occupation. The general rule should, therefore, be that no long term arrangement for occupancy should be made. If a long term arrangement should be necessary to finance a desirable objective, then the regulations should provide that such long term agreement may be entered into by the Committee, but only with the consent of the Board of Land and Works.^{143A} Further, if it may involve a building scheme with a possible change in the character of the Park as an open space, such consent should not be given until after the Board of Land and Works had obtained and considered a report by the Town Planning Authority on the effect of the proposed occupation in relation to the future proper and efficient planning of the Metropolitan area, and the retention of the Park as an open space in such planning. Similar considerations of course should equally apply to the granting of permission by the Committee to persons to build any substantial structure or enclose areas in the Park whereby the character of the Park could be altered.

6.11. There are numbers of subsidiary matters, such as keeping the roads open, which will be more appropriately in other parts of this Report. The paramount interest of

the public is to retain the Park in its character as an open space. As against that, in considering the regulations which relate to management and control, it should be borne in mind that the management of the Park is given to the Committee and no Committee should, by unnecessary inhibitions or prohibitions contained in any regulation, be discouraged in its work of management. Within the limits of the paramount interest of the public, the Committee should, in the future as in the past, be given reasonable freedom in its control and administration. The Regulations, in the main, have given this freedom and at the same time attempted to protect the public's freedom of access. The Regulations do not, however, in express terms, protect the primary purposes of the Park's existence as an open space. In this respect an amendment of the Regulations might be made as set out in the last paragraph to ensure that this purpose is not defeated by some administrative decision, however well intended, of the Committee. The great advantage would be that, just as at present, the prime responsibility in law rests solely on the Committee, the Committee would in the future, by law, have another body, the Board of Land and Works, to share with it the responsibility in decision. If the latter body obtains the advice in any matter involving enclosures or buildings of a substantial kind from the authority set up by Parliament to plan the City and its environs and which presumably, must be supposed to be expert on the subject of town planning, then sufficient safeguards will be provided to ensure that the prime public interest would not be sacrificed to decisions of expediency or a result of sentimental, or even logical or reasonable pressures.

6.12. The Regulations at present promulgated reasonably regulate the conduct of persons whilst in the Park, but some of the regulations dealing with conduct on the golf course would be much better dealt with as conditions upon which

permission to go upon and remain in the golf course is given. It is a little harsh that breaches of what in most Clubs would be regarded as etiquette may make the offender liable to prosecution in a Court of Petty Sessions. For example, by Reg. 49, it is provided that no person shall play golf in the Reserve, if in the opinion of the officer of the Committee, such person is not in full possession of sufficient and suitable equipment. Again by Reg. 50, it is provided that if golfers cannot keep up with the players in front of them, either on account of looking for a lost ball or from any other cause, they shall invite the persons following to come through them. It does seem a little hard that a player, having lost a golf ball, and having delayed to look for it and thereby holding up the field, may be prosecuted, and even arrested. Doubtless, these Regulations are administered with commonsense, but whilst they exist, they, if administered by an officious individual, could lead to unfortunate consequences. Surely the better position would be that as every person who is playing golf does so only by permission of the Committee, then his permission should be conditioned to his obedience of certain by-laws promulgated by the Committee for the conduct of persons in the golf course (or in any other specified part of the Park) and if the licensee offends against such condition or by-law, his permission is, ipso facto, revoked and he may be required to leave. If he then fail to leave, the Regulations should pick up and regulate his conduct and make his future behaviour subject to the sanctions of penalties, and even arrest.

6.13. Members of the Committee were invited to consider the Regulations and through Counsel to submit a draft of what they considered were proper and adequate regulations, for the control and administration of the Park. They have prepared such a draft and it has been tendered in evidence. The

innovations suggested therein are not very startling. As has already been observed, no change is sought in the Regulations with respect to Motor Car racing, despite the tenour of the evidence by Senator Kennelly thereon. It will be more convenient to consider those suggested amendments when dealing with the recommendations contained at the end of this report.

6.14. Concluding the report on the second term of reference, it would appear from the foregoing examination that -

- (a) on the whole, the Regulations have been adequate and suitable to protect the interests of the public, but the prime purpose of the reservation, to create an open space for recreation in the centre of a populated area, should be expressly proclaimed and protected by suitable safeguards against encroachment;
- (b) subject to possible qualifications based upon the Statutory powers, the Committee, with respect to long term occupancies and allowing charges for admission to certain areas, has exceeded the powers conferred upon it by the present Regulations.

7. FINANCE.

7.1. The third term of inquiry covers the funds available to the Committee of Management of the Park, the adequacy thereof and whether the same have been expended in the best interests of the management, control, improvement and development of the Park. It will, therefore, be necessary to discover:

- (a) what funds were available to the Committee;
- (b) whether they were adequate;
- (c) how they have been expended;
- (d) whether they were expended wisely in -
 - (i) the management,
 - (ii) the control,
 - (iii) the improvement,
 - (iv) development of the Park.

7.2. Mr. E. J. Davies an audit inspector, appointed under Section 31 of the Audit Act 1958, made a very exhaustive investigation of and produced a very informative report on the finances of the Committee, covering a period of the last five years of the administration by the Committee. The financial position of the Committee as at 23rd August 1961 was as follows:

| | | | | | | |
|--|--|--------|---------|---------|--------------|------|
| Financial Position at 23rd August 1961 | Bank accounts, Cash in hand | | £25,850 | 18 | 4 | |
| | Outstanding Loans | | 13,283 | 1 | 4 | |
| | Loan - Victorian Amateur Basket Ball Assn. | | 3,500 | - | - | |
| | Amounts recoverable: | | | | | |
| | Caulfield Grammar School | £7,315 | 8 | 10 | | |
| | S.E.C. | 1,621 | 7 | 6 | | |
| | South Melbourne R.C. | 221 | 15 | - | | |
| | Victorian Amateur F.A. | 800 | - | - | | |
| | Education Department Gym. | 4,655 | - | - | | |
| | Hakoah and South Melbourne Soccer Clubs | 8,100 | - | - | | |
| | Middle Park C.C. | 225 | - | - | 22,938 | 11 4 |
| | | | | | £65,572 | 11 - |
| | Less Commitments - | | | | | |
| | Balance due on Contract | | | | | |
| Squash Courts | £20,933 | 10 | - | | | |
| Grandstand | 251 | - | - | | | |
| Kitchen Extensions | 281 | 10 | - | | | |
| Contract price - Extension Rob's Cafe | 12,988 | - | - | | | |
| Architect's fees (Rob's Cafe) | 550 | - | - | | | |
| Architect's fees (Rob's Cafe) | 400 | - | - | | | |
| Amounts due for Lake Fencing | 1,200 | - | - | 36,604 | - - | |
| | | | | Balance | £28,968 11 1 | |

The Committee owes the sum of £16,000 to the Treasurer of the State of Victoria, being the balance of a loan granted

146. E. 50, E. 56 - see also and compare E.5.

some four years ago. It has also guaranteed repayment to the Commonwealth Bank of £5,000 being money lent to Hakoah and South Melbourne Hellas Soccer Clubs; there is, therefore, a contingent liability of £5,000.

7.3. The Committee has lent money from period to period to sporting clubs and bodies and as at 30th June 1961, the following amounts were outstanding:

| | <u>Amount of Loan</u> | <u>Repaid</u> | <u>Outstanding Balance</u> |
|----------------------------------|---------------------------|-------------------|--------------------------------|
| Victorian Speed Boat Club | £1800 - - | £1,000 - - | £800 - - |
| Albert Park Rowing Club | 1,200 - - | - | 1,200 - - |
| First Victorian Sea Scouts Group | 1,000 - - | 315 - - | 685 - - |
| Albert Sailing Club | 1,600 - - | 300 - - | 1,300 - - |
| Victorian Basket Ball Assn. | 7,000 - - | 2,000 - - | 5,000 - - |
| Victorian Badminton Assn. | 3,010 - - | 860 - - | 2,150 - - |
| Albert Park Yacht Club | 1,000 - - | 100 - - | 900 - - |
| Hakoah Soccer Club | 800 - - | - | 800 - - |
| Table Tennis Association | <u>597 8 6</u> | <u>149 7 2</u> | <u>448 1 4</u> |
| Totals: | <u>£18,007 8 6</u> | <u>£4,724 7 2</u> | <u>£13,283 1 4</u> |

It will be seen that substantial sums have been lent to sporting bodies for the purposes of improvements of their premises in the Park. Whilst there may be grave forensic risk involved in recovery, in fact, the Committee has justified its actions in making these loans by showing that the Clubs and Associations are honouring their obligations and the money is being spent on amenities in the Park. The future monies for the use of the Committee will depend greatly on the continuance of the popularity of the Sporting Centres. It will be seen that over half of the amounts owing are in respect of the

Basket Ball and Badminton Centres.

7.4. The amounts recoverable set out above amount to £22,938/11/4 and the three largest amounts are £8,100 owing by the Soccer Clubs, £7,315/8/10 by the Caulfield Grammar School and £4,655 by the Education Department. The amount owing by the Soccer Clubs is in respect of the erection of the grandstand and outbuildings at Oval 18 set aside for Soccer. The fact of this debt really forces the Committee to assist those Clubs by allowing them to enclose their grounds and charge for admittance. This has already been discussed at some length.¹⁴⁷ The behaviour of the Committee as set out therein may, in some measure, be accounted for by its desire to assist the Soccer Clubs financially. At the same time, the minutes of meetings afford no evidence that the Committee had formally adopted a policy of enclosing portions of the Park, even for such purpose. The expenditure of such a sum of money could only be justified if the expenditure thereof was necessarily appurtenant to the full enjoyment of the Park. With some reservation, the evidence seemed to establish such connection; the reservation arose from the feeling that not sufficient thought was given by the Committee to the possibilities of establishing precedents for members of the Committee in future decades to follow. The result is that the insidious development goes on spending public monies on structures and denying more and more of the area to free public access. The Caulfield Grammar School occupy a brick Rowing shed at the north end of the Lake. It is quite a handsome structure and can be fully justified as a necessary amenity for the keeping of boats and equipment for the students of the school who indulge in the sport of rowing, either in fours or eights on the Lake. Of course, the success and continued

147. See Para. 5.25 supra.

enthusiasm of the oarsmen will materially depend on how successful the Committee is in keeping down the weed in the Lake. The expenditure of the money for a gymnasium for the girls of the Macpherson Girls' High School was justified on the grounds that a portion of some of the already existing Commonwealth buildings could be set aside and improved for the better enjoyment of that area. Quite an attractive gymnasium has been built in the converted Commonwealth Store.

y.5. Over the last five years, the surplus of income over expenditure has been as follows:

| <u>1956-7</u> | <u>1957-8</u> | <u>1958-9</u> | <u>1959-60</u> | <u>1960-61</u> |
|---------------|---------------|---------------|----------------|----------------|
| £41,633 | £9,949 | £81,008 | £50,210 | £50,842. |

The combined surplus of £233,642 was largely absorbed in new works £201,061 and various loans £12,060. Whilst an exhaustive list of all the Capital works is not set out herein, the expenditure has been incurred in the erection of Rob's Cafe and golf house, the conversion and extension of the Commonwealth buildings, the continuous improvement and drainage of the western area, the erection of dressing sheds, toilets, etc.

As indications of the nature of the expenditure of a capital nature, the following sums were expended in each of the above financial years in capital works in the Golf area, and capital works in the rest of the Park area, viz:

| | <u>Golf</u> | <u>Park</u> |
|---------|-------------|--------------|
| 1956-57 | £98 - - | £19,528 19 1 |
| 1957-58 | £3 - - | £26,810 3 9 |
| 1958-59 | £3,602 12 9 | £47,862 12 2 |
| 1959-60 | £34,083 5 - | £34,349 18 7 |
| 1960-61 | £5,353 19 - | £29,747 - 7 |

It follows therefore that -

- (i) large surpluses of income have been capitalised;
- (ii) these capitalised sums have been used in the improvement of the Park area.

Of the immediate future, it is intended to construct new dressing sheds for the State Savings Bank Officers' Sporting Club at a cost of £5,514/-/- and to erect a new Par 3 Golf Course at a figure not yet properly estimated and a refreshment kiosk and golf house attached thereto. This will involve the Committee in a large expenditure expected to be in the vicinity of £20,000 for the golf course, and £35,000 for the Cafeteria erected in conjunction therewith.¹⁵⁰

7.6. From the foregoing examination, it would appear that over the last five years, the funds available were more than adequate for the Committee's need. The Committee has already financed capital development out of current income in a way which few public authorities were able to do. If those bodies and associations who have been given extraordinary assistance by the Committee meet their obligations, both with respect to capital and recurrent sums, it would appear that the Committee is in a sound financial position to meet all future foreseeable requirements. The Committee has taken the precaution of arranging an overdraft with the Commonwealth Bank up to a limit of £20,000. So far this arrangement has not been availed of but the Chairman in evidence expressed the view that with the expenditure on the Squash Courts and the extensions to Rob's Cafe, the Committee would be in the "red" when these structures were finished, but the overdraft would be quickly extinguished by the repayment of loan moneys, the recoupment of cost of buildings and the proceeds from the Golf Course rentals, etc.¹⁵¹ Unfortunately, costing of the erection of improvements is often faulty, and the original estimates often have the habit of growing with the work done.¹⁵² In consequence, no complete guarantee could be given as to the future, but as at present advised, the Committee will be able to meet its immediate future commitments.

150. T.2324.
151. T.201.
152. T.204.

7.7. Turning to the question whether the Committee has acted wisely in its expenditure, it might be said that with one exception,¹⁵³ no witness before the Board of Inquiry suggested that the Committee had been improvident in its spending. Undoubtedly, the money has been spent for the purpose of making the Park into a sporting centre unrivalled in Australia, if not in the world. For reasons stated earlier,¹⁵⁴ outdoor sport is a characteristic use of parklands in Australia. The only safeguard to be carefully watched is that by adding the practice of setting up of indoor sports to the outdoor activities, the erection of structures may so alter the Park as to change its nature. Large sums have been spent on wisdom
pendi- these buildings, and in particular, the erection of squash
of
ns. courts. It is hard to justify such expenditure except in pursuance of the ambition to make Albert Park an outstanding sporting centre. The concept is understandable but there are dangers. Converting existing structures (which must have had a great intrinsic value in situ but practically valueless as scrap) is one thing. To use public monies to erect structures to defeat the purpose of open space is something altogether different. If money were to be spent, it would be better if the precedent of reclaiming the western side were followed and the tremendous task of clearing out of weed and deepening the lake by suction dredging were undertaken to ensure proper use of the natural features of the area. There may be no spectacular evidence of some building to show for the expenditure, but at least, healthy outdoor aquatic sport would be encouraged and the sailing of yachts and dinghies on the lake would continue to add color and picturesqueness to the surroundings. It is no exaggeration to say that unless the weed is overcome, yachting and rowing, despite a long history of use, could be greatly discouraged, if not dis-

153. Mr. A. J. Jones. T.1325.

154. Para. 5-29.

continued, with great loss in the capital expended in boat houses on the shore. No one could quarrel with expenditure of money to improve the natural features and to make the use of the open space more enjoyable and pleasant. But to spend the money on buildings cannot be justified unless the building is an improvement for the proper enjoyment of the Park. It, therefore, follows that the expenditure of sums of money for the purpose of the erection of new buildings was not wise unless it was clear that the new building was ancillary to the proper enjoyment of the Park. The evidence failed to establish this burden with respect to the Squash Courts. The question of the building of Rob's Cafe has already been discussed under management.¹⁵⁵

7.8. On the other hand, the great bulk of the expenditure of capital monies over the five years was wisely undertaken in the improvement and the development of the Park. As an example of the desire of the Committee to improve the natural features of the Park, no less than £5,354 was spent in 1960/61 on paving and drainage works on the Golf Course whilst £3,416 was spent on fencing, paving, electrical and drainage works in the rest of the Park. £1,200 was spent to erect a low fence around Lakeside Drive to protect the trees which have been planted on the eastern side of the Lake (for the third attempt). Equally, the maintenance and control of the Park has over all been kept up to an excellent standard.

7.9 The Committee had reasonable financial success with all its ventures. Capital monies were lost on the Cycle track whilst the expenditure of monies on the Night Golf Range and the en-tout-cas tennis courts near Rob's Cafe proved to be poor investments, not necessarily in the financial sense, but rather in their failure to attract people to use them.

155. Para 5-24 supra.

- 7.9. Summing up of this term of Reference it would appear:
- (a) the Committee of Management has had sufficient finance adequately to provide for its needs;
 - (b) with the exception of the Squash courts, it has expended these monies wisely on amenities reasonably ancillary to the needs of the Park, either as improvements to or in maintaining the Park at a high standard of efficiency;
 - (c) for the foreseeable future, it will have sufficient funds to undertake further capital works for the better enjoyment of the Park;
 - (d) the adequacy of these funds may depend, in a large measure, on the faithful performance by the various clubs and associations of the agreements entered into by them for either repayment of loans or recoupment of expenditure on their behalf.

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8. FENCING.

8.1. The fourth term of enquiry relates to the policy and practice of the Committee and its actions in relation to fencing the Park or parts thereof and to opening, keeping open and closing roads, paths or passages in or through the Park or parts thereof. It becomes necessary to consider:

- (a) whether there is any, and if so, what policy with respect to fencing;
- (b) what has been the practice and action in relation thereto;
- (c) whether there is any, and if so what, policy with respect to roads, etc.;
- (d) what has been the practice and action in relation thereto.

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8.2. Since the thirties, the Park has been open to all users day and night. The gates are still erected in some places but are left open. For many years, there has been no exterior fence of such kind as to prevent persons entering at places other than at the gates. In consequence, when the Committee conducted the motor car racing it erected a temporary

fence around the Park to channelise persons desiring to view the races through recognized entrances. At the present time there are five areas permanently surrounded by fences; the Cricket grounds, the Bowling clubs and the Soccer ground. The Committee has also expressed the wish through the Chairman that the Committee enclose two further grounds, one for soccer and one for rugby. ^{155A} From the evidence, it became patent that the Committee had no policy on the question of erecting exterior fences around ovals. ^{155B} It had a policy of enclosing the ovals themselves with galvanized pipe fences. The only purpose of these was to define the limits of each oval and to prevent vehicles going on to the oval. Pedestrians could easily move under the fences and they offered no obstacle to any wanderer in the Park from walking where he pleased or to obscure his general view of the Park. Similarly, low fencing was erected around Lakeside Drive to protect the new trees planted on the eastern side. From the evidence, it also became plain that none of the Committee had applied his mind to the problem as to what limits would be permitted in the erection of fencing. Each application would be treated on its merits but it was obvious that it was not a task that the Committee relished. Already some criticism has been made in this report at the lack of recording of the determination to enclose the soccer ground. Parallel to fencing was the erection of buildings. The Committee has considered applications with respect to a rifle club, South Melbourne Police Youth Club and a quoits centre. These were not proceeded with but no policy emerged from the determinations thereon, save that each case had been considered on its merits. It may, therefore, be said that there was no policy adumbrated or evolved by the Committee on exterior fencing, but there was a plan to protect all ovals and growing trees by suitable iron piping or cable fences.

8.3. As to the practice and actions thereon the Committee did temporarily fence off the whole Park for motor car

155A. Also M.R. McKENZIE T.571

155B. T.569

racing. At times it also allowed temporary fencing of a small area next to the Lake and south of the South Melbourne Cricket Ground for charity fetes and fairs. Again each application was considered on its merits. Its action in fencing off the soccer ground has already been referred to.

8.4. As for the opening and closing the roads in the Park, the only policy evolved on this has been that the Committee in order to augment its revenue has collected parking fees from motorists using the roads to park their cars. In order to keep some semblance of order during the football season, certain parts of the roadways near the South Melbourne Ground have been closed to through traffic. This caused no inconvenience as there are a number of entrances from Albert Road through which the passing motorist might enter the Park to get to St. Kilda. Save for this exception, the policy of the Committee has been to accept the inevitable that the roadways are now throughways, and generally, they should be open to public users at all hours.

8.5. There have been several incidents with respect to closing the roads. The first was the closing of the roads on several days each year for motor car racing. A number of references has already been made to this, but this situation is now covered by Regulations which prohibit such action. A second incident which has already been discussed, was the closing of the Lakeside Drive from 19th December 1959 until April 1960¹⁵⁶ on the ground that the road surface was dangerous for traffic. The correspondence thereon to support such reason was produced to the Board,¹⁵⁷ but it rather appeared from the evidence and from the coincidence of events that the Committee intended to make a demonstration of strength in this matter. Other than these two isolated instances, there has also been a temporary closing of the roads for a yearly boys' cycling event,

156. See para. 2-30 supra.

157. E.35. T.388.

for the termination of certain motor car trials and for a fireworks display. These have always been only for a short period when the Park generally has been the centre of attraction in some current popular event. No one could validly object to the slight inconvenience that may be suffered at those times. The public press publicises the events and usually they occur where there would be little, if any, demand for the use of the roads as throughways. Indeed, the wise motorist going south or coming from the south to the City, would avoid this area at such periods if he had notice of the holding of the event in the Park. If the practice were constant and it happened at peak hours and for long periods of time, it would be objectionable, but in the overall period of one year, there would be a few negligible hours when a few people, negligible in number, might be inconvenienced.

8.6. From inspection, it appeared that little use was made of paths and passages through the Park. Little maintenance was called for and generally little had been given. On the other hand, the Committee had commenced the task of making a concrete walk right around the Lake. When completed, it would afford a very pleasant path for passive recreation on a summer's night.

8.7. Summing up this part of the Report it appears -

- (a) there was little defined policy in fencing, save to protect ovals or growing trees;
- (b) the practice was to treat each case of enclosure fencing on its merits;
- (c) the general policy was to keep roadways open to the public, and
- (d) in practice, on several occasions, in special circumstances, this policy was not followed.

9. ENCLOSURES

9.1. The fifth term requires consideration of whether any additional enclosed grounds for the playing of any and what games or sports should be provided. It is, therefore, necessary to consider the factors governing a decision on this matter and the effects of a decision that there should be more enclosures.

9.2. What are the factors governing the matter?

They may be stated as follows:

- (a) it must now be accepted that the primary function of this Park is as a public open space; not only is this the law while the Interim Development order continues in existence, but commonsense dictates that with the greater density of urban population, both recreation grounds and open spaces must be provided;
- (b) active and organized recreation can be carried on in the Park without affecting in any way its purpose as an open space;
- (c) the history of other enclosures in the Park show that with the passage of time and the desire to provide amenities for onlookers, the open space is diminished and privileges are conferred upon certain of the community at the expense of the rest of the community;
- (d) but there are now organizations coming into existence who claim the same privileges as have been granted in the past to the Cricket Clubs and the Bowling Greens, therefore they say we should be allowed to enclose grounds on the basis that we are just as entitled as those sections who are already entrenched. Unless a ruthless halt is called to such arguments, the same or similar arguments may be advanced for further enclosures in the future for other sports, and so the insidious process would go on until the Park became an area of enclosures. If one could guarantee that there would be no change either in the appearance of the Park or its character and purpose as an open space, then this

argument may lose some of its force. Unfortunately, despite control by the Committee over any building programme thereon, all kinds of sentimental reasons are advanced for future development of the enclosed area. A perusal of the Lands Department files on the existing enclosures demonstrates the validity of this view;

- (e) if enclosures were allowed with the building up of specified areas for various sports, the whole Park may lose its flexibility for the future use of other recreations. For example, if soccer grounds or rugby grounds were permitted, they would probably only be of value for a small number of sporting activities. Open areas allow for a further redistribution of the Park, if any particular sport should lose its appeal and popularity;
- (f) these are all general propositions which lead to the prima facie conclusion that enclosures should not be permitted. Unless there are strong contributing factors which require an enclosure to be allowed, or unless the Committee itself for the better enjoyment of an area and protection of other users, puts up a fence, such as for the prospective golf course, then there should be no further enclosures.

9.3. Assuming that, despite the above generalisations, that no further enclosures should be allowed in an area like the Park, what factors would overrule such generalisations and determine whether any particular organization or activity should be permitted an enclosure? This question may be answered as follows:

- (a) What area is to be enclosed and what effect will the siting be on the Park? It must be of reasonable size and must not deprive the Park of a substantial area. It must be remembered that the St. Kilda Cricket ground is approximately $7\frac{1}{2}$ acres, whilst the South Melbourne Ground is 10 acres.¹⁵⁸

- (b) The second factor would be whether the project could be satisfactorily financed without straining the resources of anybody.
- (c) The third factor must be how many people are likely to be provided for, either as participants or spectators.
- (d) The fourth factor would be what section of the community will be served. Will it be women's sports or exotic exercises for New Australians?
- (e) The fifth factor must be that the Park is a metropolitan area and are there any other and what areas available to the organization seeking an area in the Park.
- (f) The sixth factor would be whether the setting up of an enclosed area would increase the traffic problems of the Park.
- (g) Finally, what is the real purpose of the proposed enclosure? Is it really necessary to enclose a portion of Albert Park?

9.4. The Victorian Amateur Soccer Association and the Juventus and George Cross Soccer Clubs sought another enclosed ground for soccer. Each club has at present a home ground, George Cross at Olympic Village and Juventus at the Royal Showgrounds. Both desire to play at the Park and the Committee is desirous of accommodating them. But it will mean the enclosing of a further ground for soccer. How, in this application, is there any strong countervailing case for an enclosure? Mr. Nikakis on behalf of the Clubs in answer to the question why the ground should be enclosed, answered that the Association required it. This is not of much assistance, and particularly, when one considers that the George Cross team does not play in an enclosed ground at the present time. Analysing, however, the case on the basis of the various factors set out in the last preceding paragraph, the first

159. T.2482-3

160. T.2481. C.F.T.1762.

matter for enquiry is what area will be required. The pitch is usually 150 yards long by 75 yards wide.¹⁶¹ It would, therefore, cover an area over 2 acres for the pitch; Hellas-South Melbourne ground covers $6\frac{1}{2}$ acres. But in that case, because of the wear from playing soccer, the pitch is used only for a couple of hours on one day each week from March to November in each year. The teams practise on an adjoining oval to the enclosure. It follows, therefore, the two teams would require another 2 acres for practice, if this is to be taken as a standard requirement. The site which it is envisaged would be assigned by the Committee for use, would be on Aughtie Drive about due east of the Middle Park Station. Finance has been promised for the development of the site; it was suggested that the supporters of the Club would supply the money.¹⁶³ Each club has quite a good following of national groups of Maltese and Italians and therefore quite a large section of migrants will be provided for. Both clubs are having difficulty in obtaining suitable accommodation, and undoubtedly, some benefit might be gained by the central position of the Park to build up attendances and strengthen the clubs' finances. There should be no traffic problem if the ground was built on the suggested site. Finally, the purpose of the enclosure is solely to permit the two Soccer Clubs to charge onlookers, and is this really necessary so far as the Park is concerned?

9.5. At the outset, it may be said that no objection could be raised to allowing clubs to play soccer in the Park, but the sole matter for consideration is whether the Association or the Clubs should be granted the privilege of charging persons for entry. Now having regard to the value of the site, this is a very valuable privilege if it were granted. But it would appear that if this application were granted,

161. T.1766
 162. E.46.
 163. T.1755A, T.1764.

there would be little prospect of resisting claims from the Rugby Union, Amateur Football, Hockey Association and rather belatedly, the Baseball Association. One might have been impressed by the fact that the Committee supported this application, but in view of its timorous behaviour over the enclosing of the Hakoah Soccer ground when it acted contrary to its recorded decision, this support loses a lot of its value. Obviously, although supporting the application, it believed the decision too explosive to make a recorded decision on it. Having regard to all the factors, it would appear that the setting up of an enclosed area practically in a central position in the west and the expenditure of over £100,000 on grandstands, etc. the scheme strongly suggests a development similar to the other enclosed grounds in the Park, with the result that the open space ultimately available to the public will be considerably diminished. Having regard to the Town Planning requirements, this is not justified. It follows, therefore, that the playing of soccer, despite the toll it takes of its pitch, may continue to be played in the Park. It should not necessarily be played in such surroundings as to financially benefit the organizations or clubs by making available to them a privilege over a valuable piece of park-land at the expense of the rest of the community. So far as the Committee of Management is concerned, it does not require the revenue from this source and it does not deny to the soccer clubs the privilege of playing on the fields in their present state of enclosure.

9.6. No distinction can be drawn between the soccer and Rugby Union, save that in the case of Rugby, it has no enclosed ground at all in the Park, or indeed at the time of the enquiry anywhere else. It may be fortunate to obtain the use of Oval No. 2 Olympic Park, but it is still insisting in its application for an enclosed ground in the Park. The scheme

suggested by the Rugby Union is a grandiose scheme taking 14 acres of land about to be surrendered by the Commonwealth at the southern end of the western part of the Park, immediately adjacent to the Hakoah's occupancy of Oval 18. A great deal of the area sought is for a parking area for use of vehicles of spectators at the two rugby grounds which it is suggested will be built in this area to be enclosed. Again, however, the prime purpose of the enclosure is to enable charges to be made for entry to a site worth over £250,000 to benefit the organization rather than the public generally. For that matter, the Committee of Management itself will not benefit much for it must depend on the popularity of rugby to obtain a reasonable return for the use of valuable parkland to the exclusion of the general body of the public from the area enclosed. Not sufficient reason has been advanced for a decision in favour of the Rugby Union to defeat the fundamental principle which should govern the management of the Park namely, the preservation of the area as a public open space, in which healthy exercise and passive recreation may generally be undertaken by members of the public without any unnecessary impediment being placed in its way, by fences or enclosures placed there primarily to advantage a narrow section of the public.

9.7. From evidence given by Mr. Fullerton, the Secretary of the Victorian Amateur Football Association, that if his Association is deprived of the use of No. 2 Oval Olympic Park, it will turn its attention to Albert Park and seek an enclosed ground there. ¹⁶⁵ If the applications by the Soccer Club and the Rugby Union had been acceded to, it would indeed be harsh to keep the Amateurs out. They already use eleven ovals in the Park, but none of them are enclosed to impede the public having free access to the areas. It is, however, idle at this stage to consider the position of the Amateurs, since no application

has so far been made for the use of an enclosed area and no specific case therefor was put before the Board of Inquiry.

9.8. Summing up this part of the report, it would appear -

- (a) no further enclosures should be permitted in the Park on the evidence put before the Board;
- (b) but as it may be anticipated circumstances change, provision should be made in the Regulations for enclosures but only with the consent of the Board of Land and Works after advice from the Town Planning Authority.
165A

10. BUILDINGS

10.1. The next term of reference is whether any additional buildings should be provided in the Park for use as pavilions, dressing sheds, cafes or for the provision of any other amenities incidental to the management or improvement of the Park. This head of reference draws attention to buildings only in addition to those already existing. The squash courts are in the process of building and are to be regarded as existing. A reference to their construction has already been made and they will be further disregarded for comment.

10.2. Save for a dressing shed for the State Savings Bank Club referred to already, there was no evidence of any pressing need of further buildings as toilet blocks or dressing sheds. As the Commonwealth vacates its area, however, and new playing areas provided, doubtless there will be a further need for dressing sheds and toilets.

10.3. The Chairman put evidence forward that the Chalet in Aughtie Drive has long since outlived its usefulness and should be pulled down and replaced by a new structure. An inspection amply corroborated the fact that the Chalet was deserted and in a bad state of repair. It was clearly within the discretion of management to decide to replace it or not. In this regard it is the present intention of the Committee to make the new golf course on the east side of Aughtie Drive, practically opposite the Chalet and in order to serve this Course to

transfer the site of the new cafeteria to that area. This scheme seems perfectly sound, once it has been decided to replace the Chalet by a new structure. If the restaurant also combines in the building a golf pavilion, there is no reason why this building should not be erected. If this new short Golf Course is practicable financially and it is decided to proceed with it, then it is quite a reasonable amenity to build a clubhouse and cafe appurtenant thereto. The distinction between this case and the enclosures for Soccer and Rugby, is that here the Committee is providing amenities for all members of the public indiscriminately and attempting by its efforts to give greater enjoyment in the area. In the cases of Soccer and Rugby, the enclosures and the buildings therein are denied to the public at the will of the occupiers. Their use is limited to the decision of the members of the Club. Of course, if the Golf Course is not proceeded with, then the case which has been presented for another restaurant in the Park becomes much weaker. It could only be justified really as an adjunct to some sporting facility. In the past, the Chalet was an adjunct to the tennis courts, but with their falling popularity, so did the Chalet fail.

10.4. One of the most difficult problems for consideration was presented by the representative of the Power House organization. For some thirty years, it has had a boathouse on the Lake. This boathouse has been altered to permit the building to be used as a dressing pavilion for its footballers and for other sports, as well as a dancing floor for evening entertainment. It is proposed to pull down the building and re-erect a new building, not only on the existing site but on an extension thereof which the Committee is prepared to grant it. This organization is doing excellent work, and consequently, can demand a sympathetic treatment of its case. It was one of the most vexing problems to come before the Board, because although the ostensible reason for the existence

of the building in the Park is as an ancillary to sport carried on by the organization in the Park, its character has undergone a change to become the Headquarters of Power House. In isolation, this case could have been treated as a special one, but unfortunately Legacy Club has suggested it would like an area in the Park and similar considerations may well apply to it. No details of the Legacy scheme were submitted, whereas complete details of the Power House scheme were explained to the Board of Inquiry. The principles applicable to enclosures and buildings set out in the last part should be applied to these cases. The area of extension by the Power House is, however, negligible in relation to the great area of the Park and this distinguishes it from the other cases of enclosures and buildings referred to. Furthermore, basically the building will continue to serve primarily as an amenity to the enjoyment of the Park. If the organization were for the first time coming into the Park, different considerations might apply. But it is an established organization and its building must be accepted as an established fact. Commonsense and common fairness demands that so long as the demand for further area is only negligible, then a rebuilding scheme on an enlarged area might be permitted. The Legacy Club building plan will in the future have to be decided on its merits. On the meagre facts put before the Board, no case was made out, but it was obvious that no real attempt to do so was being pursued.

10.5. It is unnecessary, in view of earlier discussions in this report, to point out that unless buildings are reasonably ancillary to the proper enjoyment of the area as a public park, in law their erection cannot be permitted. Quite apart from these legal considerations, however, it is now very questionable whether, having regard to present development and the existing erections, any further substantial structures should be permitted in the Park. It is because of this view, that

the action of the Committee in permitting the construction of the bowling alley has already been criticised. No case has been put before the Board of Inquiry showing that it is necessary that any further substantial structures other than the replacement of existing structures, should be built to afford amenities for the users of the Park. If at any future time, any further substantial structures are required, then they should only be erected by the consent of the Committee and the Board of Land and Works, after consultation with the Town Planning Authority.

10.6. Summing up this part, it would appear -

- (a) that a new cafeteria to replace the Chalet would be proper, if it is attached to a new golf course, but if the golf course is not proceeded with, then the claim for a new Cafeteria would be considerably weakened;
- (b) that having regard to the number of large buildings already erected in the Park, prima facie, buildings should be kept to a minimum. No further substantial structures should be built without the consent of the Board of Land and Works, after consultation with the Town Planning Authority.

11. CHARGES AND FEES

11.1. The seventh term of reference requires a report on whether the powers of the Committee of Management to fix or impose or authorize the imposition of, charges for admission to the Park, or parts thereof and whether the area should be enlarged or restricted, and if the same be restricted, the best or most suitable means of providing financially for the future management, control, development and improvement of the area. The question of the powers of the Committee in this respect has already been discussed in Part 6 above, and it appeared that charges were being made by various bodies without regard to the Regulations. It was suggested therein that the Regulations

should now regularize the situation.

11.2. At the present time, the Basket Ball Centre, in particular, is making regular charges for admission and having regard to its commitments to the Committee, the latter must permit the charges to be made. Having regard to the large capital cost of the centre provided, it is not unfair to require the organization to pay a substantial fee for the use thereof and, equally, it is not unjust to authorize the organization to set up a method whereby it receives fees on admittance for the use of its facilities. Indeed, if this were not permitted, the Committee could never receive the amounts due to it. A realistic approach demands that the Committee should be in law empowered to either charge for admission, or authorize others to charge individuals in order to be able to pay the Committee a fair fee for the use. As has already been pointed out in Part 7, the financial structure of the Park depends in no small measure on the continued appeal of the sporting centres and resultant ability of the organizations therein to meet their financial obligations.

11.3. No substantive case was put forward by anyone, to justify a restriction in the powers of the Committee to make charges or authorize admission charges. Of course, in law, it is a matter of degree, but if the charges are only to areas negligible in relation to the whole, then no real objection can be raised. This accords with a commonsense approach to this head of reference. If restrictions were imposed, it would mean that the State would have to bear the burden ultimately of the upkeep of this Park. Whilst there may be something to be said for the view that this is a Metropolitan Park, carrying out a metropolitan, if not a State wide, function, and, therefore, the State should bear some of the burden of its maintenance and improvement, it does seem absurd that a Committee of Management having been appointed to manage, unnecessary restrictions should be placed on it to prevent it

from becoming self-supporting, without in any way sacrificing the character of the Park as a recreation centre in its present form. It must be assumed that the Committee of Management is a body of conscientious civic minded men, working for no reward in the interests of the public of which they form part.

12. ROADS

12.1. The eighth head of reference refers to the maintenance of roads, paths and passages in or through the Park and whether the same or any of which of them should be maintained by the Committee or by some other and what authority, having regard to the use being made or likely to be made by the public. All witnesses, without exception, accepted that Lakeside Drive, Aughtie Drive and Queen's Road Drive and become traffic throughways carrying very heavy traffic at peak periods, and it was unfair that the Committee should be called upon to maintain them. Even though it was a misuse of Park lands, because of the geographical position of the Park and the convenience of its roads, it was inevitable that the drives would be used as throughways and no action could now be taken to prevent such use.

12.2. At the Traffic Conference held in March 1961, the various traffic authorities had come to the same conclusion that the Committee should not be liable for maintenance, and from the evidence given before the Board ¹⁶⁷ this was the only conclusion that in justice could be come to. But this involves consideration of a number of other problems, viz:

- (a) what authority should maintain the roads?
- (b) what right the Committee had to demand such authority to carry out any particular repair or maintenance?
- (c) whether the roads should be excised from the Park to

167. Evidence was given by the Chairman of the Traffic Commission, Mr. J. A. Thorpe, T.1337, the Chief Planner of M.M.B.W., Mr. Hepburn, T.1193, Chief Engineer of C.R.B., Mr. Mathieson T.1375 and Assist. Chief Engineer of P.W.D., Mr. Drew, T.937.

regularize the position?

(d) what effect would any of the foregoing have on the Committee's present practice of obtaining quite a large revenue from the collection of parking fees from cars parked in the drives?

12.3. The roadways total over 4½ miles and comprise -

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| Aughtie Drive | 2,780 yards | |
| Queen's Road Drive (Fitzroy St. to Lorne St.) | 880 " | |
| Roadway at south of Lake | 340 " | |
| Albert Road Drive | 1,300 " | |
| Lakeside Drive | <u>2,300</u> " | 168 |
| Total length: | <u>7,600</u> yards | 169 |

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These roadways cover some 21 acres of the Park. If one deducts this area, together with the area of the Lake, the golf links, existing enclosures and buildings, there remains approximately 300 acres for playing fields and Commonwealth occupation. During 1934-6 the roads had been reconstructed by the Public Works Department from Unemployment Relief Funds. The through roads, with the exception of Lakeside Drive, were constructed with a central concrete strip, 20 feet wide with lightly constructed shoulders, seven feet wide. The Lakeside Drive, on the other hand, was of bituminous central pavement flanked on either side by an equestrian dirt track. As motor traffic increased, the equestrian tracks became impractical and the Lakeside Drive was widened for vehicles. In 1950, £10,000 was provided by the Government for a light bituminous surface to be placed on Lakeside Drive. In 1955, the major reconstruction by the Country Roads Board of Lakeside Drive was authorised to the extent of £25,000. Two thirds of the road was completed at a cost of £21,000 when work ceased. To reconstruct the balance of Lakeside Drive to complete the job will cost

168. E.44.
169. E.46.

approximately £20,000. As has already been expressed, this drive was closed from December 1959 to April 1960 when it was repaired at a cost of £200 provided by the Government. Since that period, the Country Roads Board has made arrangements with the South Melbourne Council to carry out repairs on the roads, and about £750 has been provided for this purpose. The report of the Traffic conference estimates that the following sums are required to bring the roads up to standard:

| | |
|--------------------|----------------|
| Queen's Road Drive | £50,000 |
| Aughtie Drive | 18,000 |
| Lakeside Drive | 20,000 |
| Albert Road Drive | <u>4,000</u> |
| Total: | <u>£92,000</u> |

The estimated cost of maintenance after reconstruction is £2,000 per annum.¹⁷⁰ Of the five drives set out above, Aughtie Drive, Queen's Road Drive and Lakeside Drive bear the through traffic. It is estimated that the through traffic in the Park is 33,000 vehicles per day.

12.4. The authorities, apart from the Committee, which could undertake the reconstruction and maintenance of these drives carrying the through traffic are -

- (a) Country Roads Board;
- (b) Melbourne and Metropolitan Board of Works;
- (c) Public Works Department;
- (d) the Municipal Councils.

Country
Roads
Board
should
undertake
responsibility.

The Traffic Conference recommended that the construction and maintenance of Aughtie Drive, Queen's Road Drive, Lakeside Drive and a portion of Albert Road Drive should be made the responsibility of a road authority with an adequate source of income and considered that the Country Roads Board would be the most appropriate authority.¹⁷¹ This recommendation was

170. E.44.
171. E.7 p.5. See also evidence of Mr. Thorpe, Chairman of this Conference at T.1350 et seq.

endorsed by the witnesses who appeared before the Board of Inquiry. Although the Board of Works had statutory power to carry out the work, so far in exercising its statutory powers it has only undertaken the responsibility of constructing and maintaining major works which form an important integral part of the traffic plan for the metropolitan area and Aughtie and Lakeside Drives, so far, do not fall within this category. The Public Works Department has from time to time done work on the drives, but it is not primarily a road construction authority.^{171A} Because of the nature and purposes of the roads, it would be unfair to ask the Municipal Councils and their ratepayers to bear the burden of these roads. They could be asked to do the actual work by the C.R.B., as is at present happening, but the money should come from some other source. Mr. Mathieson, the Chief Engineer of the Country Roads Board (who had been a member of the Traffic Conference and had refrained from assenting to the recommendation set out above) stated in evidence that there were possible statutory and policy difficulties in the C.R.B. taking over the construction and maintenance of the drives.¹⁷² First, difficulties would arise from the desire of the Committee to close the roads, even temporarily for cycling races or fireworks displays. Secondly, difficulties could arise in the actual control of the roads, since they were in a Park and formed part thereof, which by statute was to be managed by the Committee. For example, the Committee would desire to collect parking fees from motorists using the drives as parking areas during sporting fixtures at the Cricket grounds. Thirdly, difficulties may arise from who should bear the responsibility of street lighting. Finally, Counsel for the Committee had urged that the Committee should have the right to determine when repair of the roads was necessary.

171A. T.1352
172. T.1379 et.seq.

12.5. Having regard to these difficulties, Mr. Mathieson suggested an Act of Parliament should be passed to regulate the spheres of responsibility. All the evidence confirmed the view -

- (a) that the Committee should be relieved of the responsibility, and
- (b) that the roadmaking authority, and in preference the Country Roads Board, should take over the responsibility.

Despite the difficulties set out, this seems to be an eminently suitable arrangement and there seems to be no insuperable difficulty in adopting such a course. Counsel Assisting the Board suggested there was probable power conferred on the Country Roads Board under Sections 117, 110, 18 or 70 COUNTRY ROADS ACT 1958. Undoubtedly, power would exist under Sec.117. If the Committee were able to provide funds, as it was submitted it could do, if it were allowed to conduct motor racing, then it could request the Country Roads Board to do the work at the Committee's expense. On the other hand, as was pointed out above, the C.R.B. in 1955 in fact carried out constructional work on the road out of funds provided by the Government. Apparently, neither departmental or legal difficulties were encountered in making the arrangements, even if the work were not fully completed because of insufficient funds. The power to do the work existed. The only difficulty seems to be, where do the funds come from. In any event, if there should be some future difficulties arising from the nature of the statutory powers of the C.R.B. or the funds available to it, there should be no difficulty in passing a Statute as suggested by Mr. Mathieson to justify the position. Summing up, then, it is desirable that the position should be regularised, whether by Statute or otherwise, to enable the Country Roads Board to undertake the work, and at the same time permitting the Committee to retain its privileges of collecting parking fees and at odd times temporarily to close the road

for sporting fixtures.

13. CONTROL OF THE COMMITTEE.

13.1. The ninth term of reference requires a report and recommendation on whether any and what additional control over the management of the Park should be granted or reserved to the Governor-in-Council or the Minister. This requires an inquiry first as to what controls can be and are exercised and by whom, and secondly as to whether there should be any further controls.

13.2. A perusal of the files of the Lands Department show that a stricter control was kept by the Lands Department over the Committee in the early days of the Park than at the present. But with the passage of time and the development of thousands of other reserves throughout the State, and the recognition that the management is vested in a Committee which must do the best it can, restrictions can be obstructive to the proper administration of the reservation. ¹⁷⁴ But Mr. Klenner, the Secretary of the Department, in advancing these views, qualified them by pointing out that some outside control over the Committee in allowing commercial interests coming into the Park, to give extended periods of occupancy, and enclosures, ¹⁷⁴ should be instituted. It is in this opinion that a principle may be discerned. The Park must be allowed to retain its essential character and any activity which might in any way alter that character should be restricted. Accordingly, controls should be placed upon the Committee, both as an assistance to it to withstand the importunities of interested pressure groups, or the temptation of easy revenue, and to ensure the continuance of the Park as an open space, not to be exploited by private enterprise.

13.3. The existing controls are to be found in the following:

173. Even the C.R.B. did this with some of its roads, although its policy is against such closures. T.1382.
174. T.1128. T.1134.

- (a) The Board of Land and Works appoints the members of the Committee and may, without any stated reason, in its sole discretion, revoke any appointment;
- (b) it may lay down conditions on such appointment;
- (c) each year, a statement of receipts and expenditure must be supplied by the Committee of Management to the Lands Department. The accounts of the Committee are in fact audited by government auditors;
- (d) Regulations are promulgated by the Board of Land and Works; restrictions may be and have been imposed thereby;
- (e) the Act, insofar as it confers power of management limits such power "to the purposes of the Park".

13.4. From these existing controls, it may be said that, expressly or impliedly, there is sufficient protection of the essential character of the Park. This should, however, be put beyond any doubt. Management should be left as widely as possible, but in such management nothing should be done to upset the present role of this area in town planning.

Accordingly, the present controls should only be added to in the interests of town planning to prevent further changes in the character of the area. Whilst the Interim Development Order continues, there would probably be sufficient legislative control on this matter, but in the interests of future planning, some express provision should be inserted in the Regulations to control any activity which could affect the fundamental purposes of the Park. The ninth Reference inquires as to control by the Governor-in-Council or the Minister.

175

As will be seen in earlier parts of this report it was suggested that control should, in conformity with the policy of the Land Act, be exercised through the Board of Land and Works which, if the position is understood properly, really in practice means the Minister. As has been pointed out by Counsel assisting, the Minister may be in no better position

than the Committee to make a proper decision in such matters, particularly if they should be borderline cases. Accordingly, it has already been suggested under the proposed amendments of the Regulations, that the Board of Land and Works should only make a decision after receiving a report and advice on the effects of any project from the relevant Town Planning Authority.

13.5. The Chief Planner of the Board of Works, Mr. Hepburn, claimed that the Board should be consulted on any development in the Park which could affect its use as a public open space. He explained that this meant that the Board should be consulted whenever any substantial building was to be erected or any area enclosed with consequential loss of access by the public. The Board did not ask to have the final decision in the matter, but only that it should be consulted, and if no agreement was reached, the matter should be decided by the Governor-in-Council at the highest level. It seemed to be quite a reasonable request, having regard to Parliament's decisions to invest the Board of Works with power to plan the metropolis. Equally it seemed a workable arrangement, even though it may slow down administration and management by the Committee. It would appear, however, that the same safeguards could be instituted if, as has been suggested, any project which could alter the character of the Park, must be approved by the Board of Land and Works on the advice of the Town Planning Authority. As has already been observed, it would be an anomaly that a Town Planning Authority to control the development of Melbourne, having been constituted by Parliament such authority was not consulted by other duly constituted authorities, particularly those which had no member particularly skilled in Town planning or which was not responsible in any way therefor.

13.6. As a result, however, of the suggested scheme by the Board of Works, it is apparent that the Committee and the

Board of Land and Works would obtain the co-operation of the Town Planning experts of the Board of Works in coming to a proper decision whether or not any project was likely to affect the character of the Park and the general effect on the planning of open spaces and recreation areas throughout the Metropolitan area. At the present time, of course, by virtue of Sec.14(4) TOWN AND COUNTRY PLANNING ACT 1958, some safeguards are provided so long as the Interim Development Order continues. Once the Scheme is finally adopted, by virtue of Sec.8(2) of that Act, it will not apply to the Park. Hence it is desirable that at this stage some regulatory procedure should be instituted.

13.7. These additional controls should in the future then cover any project which could alter the nature of the reservation. But in the main, it would be only applicable to substantial buildings and enclosures of land. So far as long period occupancies are concerned, since the personnel of Committees change, they certainly should also be controlled ultimately by the approval of the Board of Land and Works. If, as it is now thought, that with respect to certain structures, such long term occupancies are desirable, and in law the Committee can contractually bind its successors thereby, then such long term occupancies should be strictly controlled by the Department. They are very analagous in their effect to an alienation¹⁷⁶ despite the fact that no tenure is created and all kinds of overt acts may be adopted to demonstrate that result, nevertheless the public is greatly impeded in its access and in many cases completely has lost the beneficial use of a very valuable area of public land. Accordingly, any term of occupancy over twelve months should not be permitted without the approval of the Board of Land and Works. In any event because of past experience, no greater period than 21 years should be permitted.

176. They were planned to give an occupation as close to a tenancy as possible in law. T.123.

13.8. No large commercial enterprise such as the bowling alley should be allowed upon the Park area. An opinion has already been expressed in this report that it was dubious whether the Committee of Management under its statutory powers, could have permitted it. In any event, it should now be expressly provided in the Regulations that no structure can be built for the purposes of carrying on business unless the approval of the Board of Land and Works is given thereto. This approval would only be given in the event of it appearing that the structure was to provide an amenity reasonably necessary for the full enjoyment of the Park by the users thereof.

14. REVENUE.

14.1. The tenth term asks whether the existing revenue and sources of revenue available to the Committee of Management are adequate to enable the Park to be properly and efficiently maintained, controlled, improved and developed. It is, therefore, necessary to consider -

- (a) what are the existing revenues?
- (b) the nature of their sources, and
- (c) whether the revenues are adequate having regard to possible demands for maintenance and capital work.

Some consideration has been given to these matters under Part 7.

14.2. The existing yearly revenues in round figures are as follows:

| | | |
|-------------------|--|---------|
| Municipal Grants | { South Melbourne £3,000 { St. Kilda £1,500 | £ 4,500 |
| Golf Green Fees | | 20,500 |
| Commonwealth Rent | | 42,750 |
| Sporting Centres | | 9,000 |
| Parking Fees | | 5,750 |
| Sporting Ovals | | 3,450 |
| Interest on Loans | | 1,000 |
| Rob's Cafe | | 3,500 |
| Bowling Clubs | | 200 |

| | |
|---------------------|----------------|
| Tennis | £ 400 |
| Boat Houses | 400 |
| Night Golf | 500 |
| Golf Professional | 600 |
| Refreshment Permits | 450 |
| Bank Interest | 600 |
| | <u>£93,600</u> |

Of these amounts, it may be anticipated that the amount from the indoor sporting centre will rise to £15,000 within two years, whilst it may be anticipated that the figures for interest will be decreased as payments are made out of the bank account or loans repaid. The Commonwealth is vacating nearly half of its occupancy, and consequently there will be a reduction therefrom of about £20,000 in the next two years. It was understandable that Senator Kennelly and the Committee wanted to let the area for a Bowling alley because with the rental therefrom of £5,000 per annum and £15,000 per annum to be received from the sporting centre, this loss of revenue would be made up. On the other hand, there is something to be said for the view expressed by Mr. A.J. Jones, it was not to be expected that a Committee of this Park should make such a large income out of unalienated Crown land being used as a Public Park.

14.3. The sources of revenue for the Park may be seen from a perusal of the above list of income received. Some may be of hazardous, if default were made by the voluntary associations in payment. There are obvious forensic difficulties in enforcing payment. On the other hand, experience has inspired a feeling of confidence in the Committee that none of the organizations will make default. If they continue to observe these obligations, then the Committee will have adequate resources to meet its commitments. The only obvious future sources of revenue would be first, to allow motor racing as desired by Senator Kennelly, secondly, to permit enclosures

and make charges for admission thereto of which the Committee takes a percentage, or, thirdly, to review the occupancy fees of the various sporting clubs which are very moderate having regard to capital values of land and amenities available.

14.4 The recurring expenses of management amount to approximately £45,000, so that at present there is quite a healthy surplus of receipts over expenditure available for capital works. A reference to the list of surpluses set out in Part 7 indicates the flourishing condition of the Committee's finances and show that the present revenues are quite adequate for the needs of maintenance.

14.5. Of course, there is a genuine desire to continue the improvement of the area and these capital works must be (as in the past) financed out of current revenues. Having due regard to this factor, the Committee must continue to receive the support of the Council's and the Government, under the 1947 arrangement. For the same reason, the door should not be finally closed on the question of motor car racing. If finance were required, then Mr. Bridge's theory might well be adopted, namely a motor race on one or two days a year than to build more structures for use and hire in the Park. Relieved of the necessity to construct and maintain the main roads, the Committee's main responsibility which will require money will be in the drainage and improvement of the southwestern area and along Aughtie Drive. At the same time, considerable expense will be incurred in the improvement of the Lake and the defeat of the water weed.

14.6. It was in the sphere of finance that the present Committee, and particularly the Chairman, has been very successful, and there is no reason to believe that in the immediate future, there should be any change in this situation. Despite the inhibitions that may be placed upon it by an amendment of the Regulations, as indicated herein, the Committee will, in the main, receive in the next year or so, more than sufficient monies to meet its needs. This has been amply

demonstrated in the discussions in Part 7.

15. COMMONWEALTH OCCUPATION.

15.1. The last reference enquires as to the approximate period which it will or should become possible for Defence Authorities now occupying portion of the Park to vacate their occupancies and any and what arrangements already made in that regard and for the replacement of revenue lost or likely to be lost as a result of any such vacation of occupancy.

It is, therefore, necessary to consider -

- (a) what are the Commonwealth occupancies and under what conditions?
- (b) what are the plans or arrangements for vacating the occupancies?
- (c) what arrangements, if any, have been made to replace the revenues lost by the occupation of the Commonwealth areas?

15.2. Under the provisions of Regulations under the National Security Act, in about 1941 the Commonwealth took over two areas of the Park. In 1958, the Commonwealth were in possession of 45.6 acres and in that year an arrangement was made by the Chairman with Mr. W.A. McLaren, the Secretary of the Department of the Interior.¹⁷⁷ It was then arranged that the Commonwealth would from 1st January 1958 pay 5% per annum of the capital value for the use of the land, which was valued at £20,000 per acre. It was agreed that as the Commonwealth vacated portions, the Committee was not bound to resume unless the area returned had a frontage to a Drive and was returned in a similar condition as to when it was taken by the Commonwealth. Shortly after this arrangement was made, the Commonwealth returned the three buildings set out above and was left with about 42.7 acres.¹⁷⁸

153. In answer to a request sent by the Secretary to the

177. E. 89.

178. E. 3.

Board, the Minister of the Interior informed the Board of Inquiry by letter the Commonwealth was ready to return an area of about 11 acres forthwith, and approximately another 9 acres early next year. The Minister was unable to give any indication when Albert Park would be vacated completely by the Commonwealth.¹⁷⁹

15.4. To replace the loss of revenue from the Commonwealth, the Committee had made no specific plans but hoped to use a portion of the area for the enclosure for the Rugby Union from which the Committee hoped to derive revenue. The Chairman also hoped to re-introduce motor car racing.¹⁸⁰ The rental from the Bowling Alley would also have assisted in replacing the revenue to be lost from the Commonwealth, even though the Chairman said that this motive was not the driving force in the Committee to enter into the agreement with the bowling company.¹⁸¹

16. SUMMARY OF FINDINGS.

16.1. The findings on the various terms of reference have now been set out in full, but, subject to the qualifications to be found in the detail in the foregoing parts, the substantial findings may be summarised as follows:

Term (i).

(a) In managing and controlling the Park, the Committee has achieved remarkable success in many ways, and in particular -

- (1) by raising finance from current revenue to pay for its extensive capital works;
- (2) by undertaking reclamation work on the western area of the Park, whereby 40 acres were provided for recreational purposes;
- (3) by converting Commonwealth buildings vacated by the Commonwealth, into indoor sporting centres for table tennis, basket ball and badminton, whereby

179. E.79.
180. T.434-37
181. T.233.

playing areas were provided for hundreds of thousands of young people to take part in healthy exercise at various times of day and night;

- (4) by carrying out the function of providing essential means and amenities for the proper enjoyment by the users of the Park, either for passive or active recreation. A plan of the Park setting out the various buildings and ovals is set out in Appendix V hereto.

(b) In managing the Park, the Committee may have erred:-

- (1) by expressing its readiness to allow a bowling alley company to build and occupy an area of the Park, thereby failing to protect the present fundamental purpose of the Park, namely, as an open area to which the public, prima facie, should have free access, and which may be readily used for healthy outdoor recreation, either active or passive; and
- (2) by appointing a full time secretary without having advertised the position and calling for applications for appointment.

The former criticism was answered by the Committee by pointing out that it had obtained the oral approval of the Minister of Lands and his permanent head before permission to build the bowling alley was given. This approval, however, does not render what may be undesirable into something desirable. Unlike conversion of existing buildings, the permission to erect a new building for a bowling alley, particularly by private enterprise in a Public Park, was difficult to justify in law as an act of management "for the purposes of the reservation". In any event, having regard to existing structures, no such building in the Park should, either in law or in fact, have been erected in the

reserve which had become a metropolitan open space, without the advice of the Town planning experts as to the effect thereof on the character of the Park and its relationship to the overall development of the metropolis. The latter criticism on the appointment of a full time secretary was answered by the facts that, first, another Committee of Management had engaged full time secretary without advertising the position; secondly, the Committee was justified in engaging a full time Secretary; thirdly, several suitable persons had been approached and declined; fourthly, an independent subcommittee had carefully examined the claims of the person appointed; and fifthly, in any event he had only been appointed on probation for six months and if he should prove unsuitable, his services might be easily dispensed with. This answer is not wholly satisfactory. The office is a responsible one, is quite well rewarded and serves the public. It would have been in the best interests of everyone, including the present appointee, if he had been appointed from a competitive number of applicants after due advertisement.

- (c) Other criticisms of the management were levelled at the management and control of the Park, but on investigation proved insubstantial. The work of maintenance and general administration, including the office, accounting and secretarial work, was carried on efficiently, conscientiously and in the best interests of the public. The members of the Committee, and particularly the Chairman, were conscious of their responsibilities and in the decision on anything unusual, the prior approval of the officers of the Lands Department was sought. The general objective of the Committee was to enhance the established

reputation of Albert Park as an outstanding example of a centre for healthful sport, and it may be stated that, generally, the Committee of Management attained its objective.

- (d) Reasonable and efficient methods and system of administration were employed by the Committee. It met regularly, each month. Its members, particularly the Chairman and Mr. M.R. McKenzie, assumed personal responsibility for the management of the Park. It employed appropriate staff to ensure orderly control of the Park and the proper maintenance thereof.

16.2 Term (ii).

- (a) Generally speaking, the regulations have been adequate and suitable to preserve the interests of the public, but the prime purpose of the reservation at the present time, namely to create an open space for recreation in the centre of the metropolitan area, should be expressly stated and protected by suitable safeguards against encroachment;
- (b) In the main, the Committee has not exceeded the powers conferred on it by the existing Regulations. It did, however, probably exceed such powers in granting extended term occupancies and allowing charges to certain enclosed areas. As to the former, the Committee sought to justify its actions by, first, relying on a ruling given by a former Secretary, Lands Department, that such long term occupancies could be granted, and, secondly, upon the statutory powers of management conferred upon it, apart from the Regulations. It is dubious whether either answer was sufficient, but because of the present position of the Park and the finances required for the future, the position should be regularized with suitable safeguards by clear provisions in the regulations. As to the latter, the Committee excused

itself by showing that it had applied to the Lands Department to regularize the situation by amendment of the Regulations and the administrative machinery not functioning quickly enough, the amendment of the Regulations was deferred until after this report was given.

16.3. Term (iii)

- Term -
- (a) The Committee of Management for at least the last five years has had more than sufficient funds adequately to provide for its needs.
 - (b) With the exception of the squash courts, it has, in the main, expended its monies wisely on amenities reasonably ancillary to the enjoyment of present users of the Park. Its spending over £40,000 on Rob's Cafe was somewhat extravagant having regard to the needs of the Park, but as a result of such expenditure, the Park will in the future be served by a high class restaurant and drive-in cafeteria.
 - (c) For the foreseeable future, the Committee will have sufficient funds not only for maintenance but to undertake further capital works for the improvement of the Park and better enjoyment of its users.
 - (d) The adequacy of these funds in the future will materially depend on the faithful performance by the various clubs and organizations of the agreements entered into by them for either repayment of loans or recouping expenditure incurred on their behalf. The result of this is that the Committee must, by the Regulations, be able to and must authorize such clubs and organizations to make adequate admission charges for their private facilities.

16.4. Term (iv)

- Term -
and
- (a) The Committee of Management had no defined policy on fencing, other than to erect fences for the purposes of protecting ovals or newly planted shrubs or trees.
 - (b) The practice of the Committee was to consider on its merits each question of whether to fence any area or

not. It adhered to no plan or policy, other than set out above.

- (c) The general policy of the Committee was to keep roadways open to the public.
- (d) In practice, on several occasions in special circumstances set out in this report, this policy was not followed.

16.5. Term (v)

- (a) Subject to the qualifications hereunder, no further enclosures should be permitted in the Park.
- (b) As in the course of the inquiry it appeared that circumstances frequently change with differing demands for various activities, some provision might be made in the regulations for enclosures, either substantial or in whole but only with the consent of the Board of Land and Works upon advice from the Town Planning Authority.
- (c) A Town Planning Authority has been set up by Parliament to regulate the further development of the metropolis. It would be absurd and anomalous to allow the Committee of Management, another duly constituted body, to defeat or destroy the planned function of the Park in the future development of Melbourne. The development of the Park insofar as it involves enclosures or buildings, should proceed hand in hand with its proper place in the overall town planning.
- (d) It is proposed by the Committee to build a new short golf course. This decision is essentially one for decision in the management of the Park. Because no accurate estimate of costs could be produced at the Inquiry, no finding can be made as to whether or not the plan is economically based. Again, however, that is a matter for management. There is no objection, in law or fact, to the Committee making a decision on whether or not it should construct such course. The

only problem that arises under this term of reference, is that if it goes on with the scheme, the Committee may have to erect fences to protect other users from flying golf balls. If this should involve any substantial enclosure, it could be well justified as an exception to (a) above, since the erection of the fence would be a clear act of management in making proper provision for the better enjoyment and protection of users of the Park. By such actions, the Committee would not be encouraging a privileged section of the community to develop the area by the erection of structures for the better enjoyment of the area by that section only, but would be setting aside such area for the use of any member of the public who cared to use it on the terms and conditions for the users of such area.

16.6. Term (vi)

- (a) Having regard to the number of large buildings already erected in the Park, together with the built up enclosures of the two cricket grounds, prima facie, further building should be kept to the minimum. For reasons set out above, no further substantial structures should be built without the consent of the Board of Land and Works, after consultation with the Town Planning Authority, for the metropolitan area.
- (b) A new cafeteria to replace the Chalet may be justified, if it were to serve as a golf house for a new short golf course.
- (c) As Commonwealth occupation is given up and new sports ovals are created, buildings may be necessary for the proper enjoyment of and as amenities to such ovals.

16.7. Term (vii)

- (a) Charges are being made for admission by various occupiers, without authority to do so.
- (b) Authority by regulation should be given to the Committee

to regularize this situation.

with Term-(c) No special restriction should be placed on the power
of the Committee to make or authorize charges to be
made to certain specified areas where the areas are
negligible in extent in relation to the total area of
the Park.

16.8. Term (viii)

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s and
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- (a) The drives which now constitute throughways from the City to the south should be reconstructed and maintained by some other authority than the Committee.
 - (b) The most suitable authority would appear to be the Country Roads Board.
 - (c) The Committee should, however, retain the privilege of receiving the parking fees for motor cars parked on the drives in the area as at present and have the general control of the drives as managers of the Park.
 - (d) If there be any departmental, or legal difficulties, in the Board reconstructing and maintaining roads in a public park and leaving their control to the managers of such park, then legislation should be brought down to authorize such position. The drives are only throughways at the peak hours from Monday to Friday in each week. For the rest of the time, they are an integral part of the Park area and that character should not be changed. Nevertheless, they should generally be kept open and used for the purpose for which they are to be reconstructed and maintained.

16.9. Term (ix)

- with Term -
rol and
gement.
- (a) It should be recognized that unnecessary restrictions should not be placed on the management by the Committee.
 - (b) The essential control to be imposed should be to ensure that the character and purpose of the reservation is not defeated either under the guise of proper management or driving development and improvement of the area.

- (c) To secure this, the regulations should be amended so that permission by the Committee to build substantial buildings or make enclosures should be subject to the approval of the Board of Land and Works (which really means the Minister). Such approval should not be given until after consultation with and receiving advice from the Town Planners. Long occupancies should also be subject to the approval of the Board of Land and Works.

16.10. Term (x)

- Term -
ne.
- (a) In the past five years, revenue has been very high, and on present indications the present year's income will be approximately £93,600. As the expected recurring expenditure on maintenance will be £45,000, there will be quite a handsome surplus for capital improvements. The last year's statement of receipts and expenditure is set out in Appendix VI hereto.
- (b) Therefore, there should in the immediate future be sufficient revenue to enable the Park to be properly and efficiently maintained controlled improved and developed.
- (c) The future sources of income are somewhat limited, and accordingly the Committee should continue to receive grants from the Municipalities and the State to assist its work of development and improvement of the Park.
- (d) The availability of monies will depend considerably on the ability of various associations to pay. To enable them to do so, it is, therefore, necessary wherever required, to authorise them by the Regulations to make charges for admission.

16.11. Term (xi)

- nth
- (a) About half the Commonwealth occupation will be returned within the next twelve months.
- (b) It is not yet known when the balance of the Commonwealth occupation will become available to the Committee.
- (c) No arrangements in particular had been made to replace

revenues lost by the Commonwealth returning the area. The Committee of Management on the other hand had hoped that the rent to be received from the bowling alley and the Sports centre would cover practically the loss of revenue from the Commonwealth. Even with the loss of some £20,000 of Commonwealth rent, there should be, however, adequate revenue and finance generally in the immediate future to carry out the work of maintenance and improvement of the Park.

17. RECOMMENDATIONS AND ACKNOWLEDGEMENTS.

17.1. From the foregoing survey of the management of the Park, it is obvious that amendments to the regulations should be made:

- (a) to safeguard the principal purposes of the reservation at the present time; and
- (b) to regularize the charging of admissions to certain limited areas; and
- (c) to regulate the making of long term occupancy agreements; and
- (d) within such restrictions, to place as little obstacle as possible in the way of management of the Park; and
- (e) to remove out of the existing regulations any reference to rules of conduct which might be denominated etiquette in a particular sport or recreational activity and give power to the Committee to make by-laws as and by way of conditions to the granting of any licence, permit, consent or authority. To obtain these objectives, a draft set of regulations is set out in Appendix VII of this report. It should be noted that the present regulations 5(4) and 6 are omitted from the draft as being ultra vires.¹⁸²

17.2. In the future engagement of highly paid officers or employees of the Committee, the appointment should be

182. See *Wm. Cook Pty.Ltd. v Read* (1940) V.L.R. 214. *Clements v Bull* (1953) A.L.R. 381 at p. 384.

advertised and applications called for. Since the Park is "beneficially occupied" by the public, and public monies are being used for salaries and wages, appointments to conduct such park should not be limited to friends or acquaintances of the members of the Committee, but should be open to all members of the Public qualified to carry out the work required. No regulation or statutory provision should necessarily be promulgated to ensure this, but the Committee of Management should be informed by the Lands Department that it is the desire of the Crown, the Committee's principal, that this administrative procedure should be followed in the future.

17.3. Various witnesses complained about the lack of information as to the plans of the Committee or the proposed activities of the Committee. Because of the Municipal and public representatives on the Committee, these complaints, on the whole, appeared exaggerated but since the public is so vitally interested in the Park, the annual statement of receipts and expenditure and any report accompanying should be made available by the Committee to the members of the public interested, so that they might know what is being done and how money is being expended by the Committee. This will be covered in the draft regulation No. 60.

17.4. Having regard to the successful achievements obtained by this Committee and its predecessors, as shown by the observable results, no case has been made for any change in the method of appointment of members of the Committee or the representation of local bodies thereon.

17.5. Despite the obvious economic disadvantages thereof, steps should be continued to obtain the balance of the Commonwealth occupation on the south side of the Park. If and when it is returned, some further appreciation will have to be made of the economics of management of the Park. Until that period the Committee of the Park should have adequate finance for both maintenance and improvement work. In the event of

the requirements of financial stringency, and only then, further consideration might be given to the reintroduction of motor racing as a medium for raising funds to finance the Park.

17.6. As a prima facie rule, no agreements should be entered into for long term occupancies. They render the use of the park inflexible. Of course, with the cricket grounds and the bowling Clubs, the flexibility of the use of these areas available to the Committee has long since been lost. It would be attempting to put the clock back to attempt to retrieve control of these areas. There can be no valid objection, therefore, to entering into long term arrangements with the organizations governing such areas, provided proper legal precautions are taken to overcome any forensic difficulties of enforcement. Similar considerations might apply equally to Power House.

17.7. Since the Park has assumed a role of being a metropolitan park, having a large capital value, providing a large income and requiring expensive maintenance and improvements, a full-time secretary-manager, amply rewarded, should be appointed to relieve the Committee of the responsibility of day to day management.

17.8. The Committee should be absolved from the responsibility of reconstructing and repairing Lakeside Drive, Queen's Road Drive and Aughtie Drive and adopting the recommendation of the Traffic Conference in March 1961, the Country Roads Board should be requested to perform the task. At the same time, the roads should not be excised out of the Park but should be left under the control of the Committee in order that at times, it may collect parking fees in respect of the drives and close them temporarily for a few hours at non-peak times for recreational purposes.

17.9. No further enclosed grounds within the Park should be provided except by consent of the Board of Land and Works

after proper advice. The Committee should encourage participation in sport, but not the building up the revenues of clubs and organizations by allowing them to make charges to enclosures by enclosing playing fields from very valuable parklands and denying or impeding the public access to areas of this public park.

further
buildings.

17.10. No further substantial buildings (other than in lieu of the Chalet, a cafeteria and clubhouse to serve the new golf course, if constructed), should be permitted, except with the consent of the Board of Land and Works and then only after advice from expert town planning authorities. This latter condition has been added because it was urged that the Board of Land and Works was no more expert than the Committee in coming to a conclusion on any question of whether or not enclosures or buildings should be permitted.

knowledge-
of the
of Mr.
e.

17.11. Before concluding this report, acknowledgement should be made of the painstaking and helpful work of the Secretary to the Board, Mr. C.E. Slade, who proved of great assistance to the Board, to counsel and practitioners appearing before the Board and to the various persons who sought to give evidence in the proceedings. In particular, Mr. Slade prepared and kept an up-to-date and very useful index of the lengthy transcript and of the numerous exhibits tendered in evidence.

knowledge-
counsel's
assistance.

17.12. Acknowledgement of the valuable assistance received from Mr. Woodward the Counsel assisting the Board, must also be made. Other counsel and practitioners, Mr. Cullity in particular, also afforded useful assistance to the Board to carry out its task. Finally, it must also be acknowledged that the Board received ready co-operation and great help from the officers of the Lands Department, particularly Mr. Klenner, the Secretary, the Chairman and members of the Committee of Management and all persons who sought to give evidence in the proceedings before it.

Owen Dixon Chambers,
Melbourne.

OLIVER J. GILLARD.

18. APPENDICES.

- Appendix I. Order-in-Council dated 26th July, 1961.
Appendix II. List of Witnesses.
Appendix III. List of Exhibits.
Appendix IV. List of Clubs and organizations using the Park.
Appendix V. Plan of the Park.
Appendix VI. Statement of Receipts and Expenditure for year ending 30th June, 1961.
Appendix VII. Draft of recommended Regulations.

19. ANNEXURES.

- Annexure I. Transcript of Evidence.
Annexure II. Copies of Exhibits.

(Note: These annexures are only annexed to Copy No. 1 of this report).

APPENDIX I.

BOARD OF INQUIRY INTO THE MANAGEMENT, DEVELOPMENT
AND IMPROVEMENT OF THE AREA KNOWN AS
ALBERT PARK

At the Executive Council Chamber, Melbourne, the
twenty-sixth day of July, 1961.

PRESENT:

His Excellency the Administrator of the Government of Victoria.

| | | |
|------------|---|----------------|
| Mr. Bolte | : | Mr. Chandler |
| Mr. Mibus | : | Mr. Bloomfield |
| Mr. Petty | : | Mr. Turnbull |
| Mr. Reid | : | Mr. Porter |
| Mr. Fraser | : | Mr. Thompson. |

WHEREAS it is deemed expedient that a Board of Inquiry be appointed to inquire into, report upon and make recommendations concerning the management, development, improvement and means of financing the management, development and improvement of the area reserved and known as Albert Park:

Now therefore, His Excellency the Administrator of the Government of the State of Victoria, in the Commonwealth of Australia, and with the advice of the Executive Council of the said State, doth by this Order constitute and appoint -

OLIVER JAMES GILIARD, Q.C.,

to a Board to inquire into, report upon and make recommendations concerning the management, development, improvement and means of financing the management, development and improvement of the area reserved and known as Albert Park, and, in particular and without prejudice, to the validity of the foregoing upon -

- (i) The management and control of the said area and the methods and system of administration employed by the Committee of Management.
- (ii) The regulations relating to the management and control of the said area, the adequacy and suitability thereof to preserve the interests of the public, and whether the powers conferred thereby upon the Committee of Management have been exceeded in any and what respects.
- (iii) The funds available to the Committee of Management of the said area, the adequacy thereof, and whether the same have been expended in the best interests of the management, control, improvement and development of the said area.
- (iv) The policy and practice of the Committee of Management and its actions in relation to fencing the said area or parts thereof, and to opening, keeping open and closing roads, paths or passages in or through the said area or parts thereof.
- (v) Whether enclosed grounds within the said area for the playing of any and what games or sports in addition to those already existing should be provided.
- (vi) Whether buildings additional to those already existing should be provided in the said area for use as pavilions, dressing sheds, cafes or for the provision of any other and what amenities incidental to the management, control, improvement and development of the area.

- (vii) The powers of the Committee of Management to fix or impose, or authorize the imposition of, charges for admission to the said area or parts thereof, and whether the same should be enlarged or restricted and if the same should be restricted the best or most suitable means of providing financially for the future management, control, development and improvement of the area.
- (viii) The maintenance of the roads, paths and passages in or through the said area, and whether the same or any and which of them should be maintained by the Committee of Management or some other and what authority, having regard to the use thereof made or likely to be made by the public.
- (ix) Whether any and what additional control over the management of the said area by the Committee of Management should be granted or reserved to the Governor in Council or the Minister.
- (x) Whether existing revenue and sources of revenue available to the Committee of Management are adequate to enable the area to be properly and efficiently maintained, controlled, improved and developed.
- (xi) The approximate periods within which it will or should become possible for Defence authorities now occupying portions of the said area to vacate their occupancies, and any and what arrangements already made in that regard and for the replacement of revenue lost or likely to be lost as the result of any such vacation of occupancy;

full power and authority to call before him any person whose evidence in his judgment is material to the subject matter of the inquiry to be made by the Board and to inquire of and concerning the premises by all such means whatsoever:

And it is hereby directed that the said Oliver James Gillard, Esq., shall, with as little delay as possible, report under his hand his findings resulting from this inquiry:

Whereof the said Oliver James Gillard, Q.C., and all other persons whom it may concern are to take notice and govern themselves accordingly.

And the Honorable Arthur Gordon Rylah, Her Majesty's Chief Secretary for the State of Victoria, shall give the necessary directions in accordingly.

A. H. MAHLSTEDT,

Clerk of the Executive Council.

APPENDIX II.

LIST OF WITNESSES BEFORE BOARD.

| Witness | Organization | Date of Appearance | Transcript Reference |
|-----------|--------------------------------------|----------------------|----------------------|
| Wen | A.C. Lands Department | 1.9.61 | 1456-1493 |
| Wick, | R.J. Vic.Baseball Assn. | 14.9.61 | 2186-2231A |
| Wicki, | A.J. Children's Court Mag.Assn. | 1.9.61 | 1416-1455A |
| Wrie, | I.F. Vic. Rugby Union | 22.9.61 | 2368-2322 |
| Wiherton, | B.A. Speed Boat Distributor | 12.9.61 | 1987-1993 |
| Widge, | A.E. Architect, Local Resident | 15.9.61 | 2282-2311 |
| Wite, | R.E. Sec.Committee Management | 25.8.61 | 1015-1038 |
| W. | W.J. Committee Member | {22.8.61 {23.8.61 | 663-803 |
| Widrea, | C.F. Juventus Soccer Club | 7.9.61 | 1749-1761 |
| Wrie, | D.J. Government Auditor | 29.8.61 | 1076-1117 |
| Wew, | A.C. Hon. Engineer | {24.8.61 {25.8.61 | 937-1014 |
| Wlery, | J. Sec.Squash Racquet Assn. | 13.9.61 | 2084-2093 |
| Wrry, | F.J. South Melbourne C.C. | 23.8.61 | 855-874 |
| Wrgon, | C.P. Nagambie Speed Boat Club | 12.9.61 | 1969-1987 |
| Wllerton, | J. Vic.Amateur Football Assn. | 8.9.61 | 1818-1844 |
| Wleard, | A.H. Albert Park Yacht Club | 7.9.61 | 1767-1800 |
| Wrdon, | J.P. Vic.Speed Boat Club | 12.9.61 | 1993-2019 |
| Wry, | J. Lord Somers' Camp and Power House | {12.9.61 {13.9.61 | 2020-2064 |
| Wllton, | D.J. Sth.Melb.-Hellas Soccer | 7.9.61 | 1715-1733 |
| Wlow, | D.W. Vic.Model Aero.Assn. | 8.9.61 | 1905-1930 |
| Wburn, | J.A. Town Planner, M.M.B.W. | 30.8.61 | 1193-1266 |
| Wlge, | A.H. S.M. Cycling Club | 8.9.61 | 1881-1904 |
| Wking, | C.A. M.M.B.W. | {30.8.61 {31.8.61 | 1265-1297 |
| Wchinson, | A.R. Council of Progress Assn. | {5.9.61 {6.9.61 | 1589-1687 |
| Wns, | A.J. D.L.P. | 31.8.61 | 1297-1336 |
| | | {14.9.61 {15.9.61 | 2232-2281 |
| Wnelly, | P.J. Chairman, Committee | 8.8.61 | 89-96 |

APPENDIX II.

| Name of Witness | Organization | Date of Appearance | Transcript Reference |
|---------------------|---------------------------|---|----------------------|
| 1. Kennelly, P.J. | Chairman, Committee | 9.8.61) 10.8.61) 15.8.61) 16.8.61) | 106A-462 |
| 2. Kennelly, P.J. | Chairman, Committee | 18.8.61 | 577-625 |
| 3. Kennelly, P.J. | Chairman, Committee | 15.9.61 | 2315-2363 |
| 4. Kennelly, P.J. | Chairman, Committee | 22.9.61 | 2373-2460 |
| 5. Klenner, F.H. | Sec. Lands Department | 29.8.61) 30.8.61) | 1118-1193 |
| 6. Langlands, D.G. | Albert Sailing Club | 7.9.61 | 1800-1817 |
| 7. Liney, G.E. | Government Auditor | 25.8.61) 29.8.61) | 1038-1076 |
| 8. Logan, H. | Local Resident | 5.9.61 | 1555-1589 |
| 9. Marmards T.J. | Sth.Melb-Hellas Soccer | 7.9.61 | 1740-1748 |
| 10. Martin, D. | Hakoah Soccer | 7.9.61 | 1733-1740 |
| 11. Mathieson, J. | C.R.B. | 31.8.61 | 1375-1384 |
| 12. McAndrew J. | Landscape Preservation | 5.9.61 | 1496-1555 |
| 13. McKenzie M.R. | Committee Member | 17.8.61) 18.8.61) | 463-577 |
| 14. McKenzie, R.L. | Part-time Sec. Committee | 24.8.61 | 875-936 |
| 15. Pearce, P.F. | R.V.I.A. | 13.9.61) 14.9.61) | 2134-2174 |
| 16. Power, F.R. | Local Resident J.P. | 13.9.61 | 2064-2083 |
| 17. Ramsden, G.E.W. | Vic. Rugby Union | 1.9.61 | 1385-1416 |
| 18. Rundle, M. | Vic. Table Tennis Assn. | 13.9.61 | 2093-2113 |
| 19. Stacey, S.G. | George Cross Soccer | 7.9.61 | 1761-1766 |
| 20. Talbot, J. | St. Kilda C.C. | 23.8.61 | 803-855 |
| 21. Telford, B. | Committee Member | 18.8.61 | 627-662 |
| 22. Terdich, A.C. | Light Car Club | 8.9.61 | 1844A-1880 |
| 23. Thomas, W.R. | Vic. Amateur Soccer Assn. | 6.9.61) 7.9.61) | 1687-1715 |
| 24. Thorpe, J.D. | Traffic Commission | 31.8.61 | 1337-1375 |
| 25. Ward, H.R. | Vic. Badminton Assn. | 14.9.61 | 2174-2186 |
| 26. Watson, K.B. | Vic. Basketball Assn. | 13.9.61 | 2113-2134 |
| 27. West, H.T. | Resident | 12.9.61 | 1930-1968 |

APPENDIX III.

BOARD OF INQUIRY INTO ALBERT PARK.

EXHIBITS.

| <u>Description.</u> | <u>Transcript Reference.</u> |
|---|------------------------------|
| History of Albert Park. | T.47. |
| Plan of Albert Park as at present. | T.58. |
| Plan of area of Commonwealth occupation, shown on Exhibit 2. | T.62. |
| Allocation of Grounds for 1961 prepared by a representative of the Committee of Management. | T.71. |
| Statement of receipts and expenditure for years ended 30th June, 1957, 58, 59, 60. | T.75. |
| Melbourne and Metropolitan Board of Works Interim Development Order 1959, plan, together with Interim Development Order 1959 and Ordinance supporting same. | T.81. |
| Report of the Conference on Roads in and about Albert Park published March, 1961. | T.84. |
| Regulations for the care, protection and management of the Albert Park. | T.96. |
| Agreement between the Committee of Management and Trustees of Hakoah Soccer Club and South Melbourne Hellas Soccer Club dated 1st June, 1961. | T.147. |
| Agreement between the Committee of Management and the President and Secretary of the Hakoah Soccer Club dated 1st June, 1961. | T.147. |
| Agreement between the Committee of Management and the Victorian Badminton Association dated 1st February, 1959. | T.187. |
| Agreement between the Committee of Management and the Victorian Badminton Association dated 3rd February, 1959. | T.187. |
| Agreement between Victorian Amateur Basketball Association Co-operative Community Advancement Society and Committee of Management dated 1st February, 1959. | T.207. |
| Agreement between same parties dated 3rd February, 1959. | T.208. |
| Agreement between same parties dated 1st July, 1961, with respect to a loan. | T.208. |
| Agreement between same parties dated 1st July, 1961, with respect to construction and rent. | T.221. |
| Agreement (undated) between V.A.B.A. and Senator Kennelly on behalf of Committee of Management. | T.240. |
| Letter from Senator Kennelly to Secretary for Lands dated 26th May, 1961. | T.240. |
| Agreement dated 19th June, 1961 between Albert Park Committee of Management and Bowling Centres Holdings Limited. | T.245. |
| Agreement (undated) between Senator Kennelly, Chairman of Albert Park Committee of Management and President of the South Melbourne Cricket Club. | T.256. |

EXHIBITS.

2.

| Description | Transcript Reference |
|--|----------------------|
| Agreement (undated) between Squash Racquet Association of Victoria and Albert Park Committee of Management. | T.266 |
| Agreement dated 23rd February, 1961 between Senator Kenelly on behalf of Committee of Management and Dennis Francis Lucy. | T.276 |
| Report by Mr. A. C. Drew to the Chairman of the Committee of Management dated 19.12.1958 on the uses of the lake. | T.301 |
| Agreement between 1st Victorian Sea Scout Group of Boy Scouts and Chairman of Committee of Management dated 25.9.54. | T.316 |
| Agreement between Albert Park Rowing Club and Chairman of Committee of Management dated 19.11.1955. | T.317 |
| Agreement between Albert Sailing Club and Chairman of Committee of Management dated 1.2.1959. | T.317 |
| Agreement between Albert Yacht Club and Chairman of Committee of Management dated 1.2.1959. | T.317 |
| Agreement between Victorian Speed Boat Club and Chairman of Committee of Management dated 19.11.1955. | T.317 |
| Agreement between Caulfield Grammar School Council and Chairman of Committee of Management dated 6.6.1960. | T.317 |
| Agreement between South Melbourne Rowing Club and Chairman of the Committee of Management dated 1.11.1960. | T.318 |
| Agreement between Albert Park Committee of Management and Robert Catering Pty. Ltd. dated 25.1.1960. | T.377 |
| Agreement between Albert Park Committee of Management and Robert Catering Pty. Ltd. dated 14.7.1960. | T.377 |
| Agreement between Senator Kennelly, Chairman of Committee of Management and the Committee of the St. Kilda Rowing Club dated 21.12.1959. | T.378 |
| Plan bearing date 3rd June, 1864 of "Albert Park" area, | T.395 |
| Correspondence relating to driveways in Albert Park. | T.398 |
| Letter from Mr. Hollingworth on behalf of the "Good of Cycling Committee" to Secretary, Board of Inquiry dated 27.7.1961. | T.413 |
| Agreement between Committee of Management and Minister of Education dated 25.1.1960 in respect of loan. | T.464 |
| Agreement between Committee of Management and Minister of Education (undated) in respect of occupancy. | T.464 |
| Report of Sub-committee to appoint a Secretary-Manager and the duties of a Secretary-Manager. | T.566 |
| Minutes of deputation to Minister of Lands concerning Motor Racing on Albert Park 13th April, 1959. | T.792 |
| Letter dated 5th July, 1961 sent by Committee of Management to 6 Corporations asking whether they are interested in taking over a cafeteria or restaurant on west side of Lake near Aughtie Drive. | T.851 |

EXHIBITS.

3.

| Description | Transcript Reference |
|---|----------------------|
| Extract from Sun Pictorial July 13th 1935. | T.940 |
| Extract from the Herald undated but believed to be in the 1930's. | T.943 |
| Statement prepared by Mr. Drew on Albert Park Roads. | T.945 |
| Agreement dated 14.7.1954 between the Treasurer and Committee of Management re Loan of £20,000. | T.963 |
| Statement by Mr. Drew as to areas in Albert Park. | T.964 |
| Plan of Albert Park Lake showing depth of water and use of Lake by organizations. | T.964 |
| Notes prepared by Mr. Drew (Engineer) with respect to supply of water to Lake. | T.980 |
| Plan prepared by Mr. Drew showing drainage of area of Albert Park. | T.989 |
| Report by Mr. E. J. Davie, Audit Inspector upon books and accounts of the Committee of Management and statements of receipts and expenditure 1.7.59-30.6.61, 1.7.61-23.8.61. | T.1060 |
| Statement from Mr. Hepburn, Town Planner of the Melbourne and Metropolitan Board of Works headed "submission on Town Planning". | T.1194 |
| Document prepared by witness Hosking setting out a description of the lands and tenements on the Albert Park reserve provided with the Board's services, a document setting out the charges and valuations of those tenements for Board purposes, a plan setting out the identification of the various tenements, a second plan setting out the sewers and mains in the area and a third plan setting out the drains of the Board of Works in the area. | T.1267 |
| Copy of a letter sent by witness Jones to all L.C.P. Members of both Houses of State Parliament. | T.1335 |
| Summary of submission by Victorian Rugby Union prepared by witness Ramsden. | T.1386 |
| Plan showing suggested development of the area at present occupied by Commonwealth being immediately south of the Soccer Ground occupied by Hakoah and South Melbourne - Hellas Soccer Clubs. | T.1395 |
| Financial position of Committee of Management as at 30th June, 1961 and 23rd August, 1961. | T.1456. |
| Statement prepared by witness Allen in respect of other major parks in the Metropolitan area. | T.1460 |
| Submissions prepared by the Landscape Preservation Council and submitted through the witness, Dr. McAndrews. | T.1500 |
| Resolutions passed at General Meeting of the Council of Progress Associations of Victoria held at Victorian Railways Institute Rooms on 19th July, 1961. | T.1598 |
| Minutes of a public meeting held in South Melbourne Town Hall on 25.7.1961. | T.1615 |

EXHIBITS.

4.

| | Description | Transcript Reference |
|-----|--|----------------------|
| 1. | Letter dated 29.7.1961 from witness Hutchinson to Board of Inquiry setting out his submission in support of his thesis. | T.1621. |
| 2. | Statistics and information prepared by witness Gayleard with respect to various Clubs using Albert Park Lake. | T.1767. |
| 3. | Submission on behalf of Light Car Club of Victoria presented by witness Terdich. | T.1845. |
| 4. | Letter dated 10th August, 1961 from Albert Park Rowing Club to the Secretary of the Board of Inquiry. | T.2020. |
| 5. | Letter dated 4th August, 1961 from witness Gully (Power House) to the Secretary of Board of Inquiry. | T.2020. |
| 6. | Letter dated 6.9.1961 from witness Power to the Secretary of the Board of Inquiry. | T.2064. |
| 7. | Thirty-first Annual Report for 1960 of the Victorian Table Tennis Association. | T.2112. |
| 8. | Letter dated 15.8.1961 from the Royal Victorian Institute of Architects to the Secretary of the Board of Inquiry. | T.2135. |
| 9. | Submissions in writing made by witness Mr. Jones when he gave evidence on 31st August, 1961. | T.2232. |
| 10. | Letter (undated) sent by witness Bridge to the Board. | T.2283. |
| 11. | Case for opinion and opinion of Mr. Wrixon dated 6.1.1888 relating to Elsternwick Park. | T.2313. |
| 12. | Opinion by Mr. Neighbour together with memoranda dated 2nd November, 1894. | T.2313. |
| 13. | Opinion of Mr. Guinness dated 7.3.1890. | T.2313. |
| 14. | Opinion of Mr. Guinness re reserve in Maryborough. | T.2313. |
| 15. | Opinion of Mr. Guinness re Princes Park Croquet Club. | T.2313. |
| 16. | Letter dated 1.9.1961 from Mr. J. Wight to Secretary of Board. | T.2314. |
| 17. | Extracts from minutes of the Albert Park Committee of Management in February and March, 1953. | T.2341. |
| 18. | Draft Regulations presented by Committee of Management for consideration of the Board. | T.2365. |
| 19. | Copy letter of 30.8.61 from the Secretary of Board to the Minister for the Interior and his reply thereto dated 18.9.61. | T.2372. |
| 20. | Inventory of Park equipment and stocks as at 30.6.1961 | T.2403. |
| 21. | Statement of insurances as at present date | T.2403. |
| 22. | List of organizations which used facilities in Albert Park 1961. | T.2405. |
| 23. | Copy letter dated 22.10.59 from the Department of Crown Lands and Survey to St. Kilda Bowling Club. | T.2410. |

EXHIBITS.

| Description | 5. Transcript Reference |
|---|-------------------------------|
| 4. Comparison of the areas in the Park in 1947 and 1961 | T.2415. |
| 5. Memorandum bearing date 12.11.1947 signed by P. J. Kennelly Minister of Public Works, J.P. Barry for the city of South Melbourne, Hubert Moroney, Mayor, Bernard Grey and Alfred Kelly, Acting Town Clerk for the City of St. Kilda. | T.2422. |
| 6. Letter dated 17.8.1961 from Alexander Mair Esquire to Senator Kennelly. | T.2430. |
| 7. "The Record" of 27.2.1960. | T.2431. |
| 8. "The Record" of 5.3.1960. | T.2431. |
| 9. Letter from Chairman of Committee of Management to Mr. McLaren, Secretary, Department of the Interior, dated 9.6.1958 and Mr. McLaren's reply dated 20.6.1959 | T.2462. |
| 10. Submissions on behalf of the Committee of Management of Albert Park on the legal position. | T.2539. |
| 11. Submissions of Counsel assisting. | T.2645A. |
| 12. Minutes of 1712th meeting M.M.B.W. and report attached thereto on a bowling alley for Albert Park. | |

APPENDIX IV.

ALBERT PARK COMMITTEE OF MANAGEMENT.

ORGANISATIONS WHICH USED FACILITIES IN ALBERT PARK - 1961.

| <u>Contents</u> | <u>Page</u> |
|---|-------------|
| 1. Football Clubs with Home Grounds in Albert Park. | 1. |
| 2. Teams other than Home Teams, which played in Albert Park in 1961. (List not exhaustive). | 2. |
| (a) Football | 2. |
| (b) Soccer | 6. |
| (c) Cricket | 7. |
| (d) Rugby | 9. |
| (e) Baseball | 10. |
| (f) Hockey | 10. |
| (g) Lacrosse | 11. |
| (h) Irish Athletics | 11. |
| (i) Ladies Basketball | 11. |
| 3. Schools using Albert Park | 12. |
| 4. Varieties of Sport in Albert Park | 13. |
| 5. Clubs with Club houses in Albert Park | 14. |
| 6. Special Events in Albert Park | 15. |
| 7. Associations using Albert Park | 16. |
| 8. Charity Organisations using Albert Park | 16. |
| 9. Commercial Organisations in Albert Park before 1947. | 17. |
| 10. Grounds Enclosed before 1947. | 17. |

FOOTBALL CLUBS IN ALBERT PARK

South Melbourne Football Club.
St. Kilda Football Club.
Collegians Football Club.
Commonwealth Bank Football Club.
South Melbourne Colts Football Club.
South Melbourne United Football Club.
Power House Football Club.
Esplanade Football Club.
George Football Club.
South Melbourne Fourths Football Club.
South City Parks Football Club.
South Melbourne District Football Club.
Southern Stars Football Club.
Standard Cars Football Club.
De La Salle Old Collegians Football Club.
E. S. & A. Bank Football Club.
South Melbourne Y.C.W. Football Club.
Caulfield Grammar Football Club.
Old Caulfield Grammarians Football Club.
South Combine Football Club.
St. Vincent's Hostel Football Club.
Middle Park Y.C.W. Football Club.
University Reds Football Club.
University Junior Football Club.
A.N.Z. Bank Football Club.
Old Brighton Grammarians Football Club.
Sunday Social Football Competition.
National Bank Football Club.
De La Salle Reserves.
Age Football Club.
A.M.P.S. Football Club.
Australian Postal Institute Football Club.
Brooklands Accessories Football Club.
St. Kilda C.B.C. Old Boys Football Club.
Commercial Bank Football Club.
Menzies Football Club.
Collegians Gold Football Club.
Commonwealth Bank Junior Football Club.
Truth & Sportsman Football Club.
G.M.H. Football Club.
A.B.C. Football Club.
P.M.G. Football Club.
Police Football Club.
Custom & Excise Football Club.
Civil Aviation Football Club.
Gibbs Bright & Co. Football Club.

TEAMS, OTHER THAN HOME TEAMS, WHICH HAVE PLAYED

ON ALBERT PARK THIS YEAR.

FOOTBALL.

Victorian Amateur Association.

"A" Section

University Blacks
Old Melbournians
Ormond
Old Paradians
U.H.S. Old Boys
University Blues
Old Xaverians
Alphington

"B" Section

Old Scotch College
Geelong
Ivanhoe
Coburg
Parkside
M.H.S. Old Boys
Kew
Hampton Rovers

"C" Section

St. Kevins Old Boys
Bellfield
Footscray T.S.O.B.
Old Geelong Grammarians
Glenhuntly
Ajax
Brunswick
State Savings Bank

"D" Section

Fairfield
Malvern
West Brunswick
Old Brighton Grammarians
Elsternwick
Murrumbeena
East Malvern
Caulfield Grammar

"E" Section

Old Trinity Grammarians
Old Carey Grammarians
Preston
Old Camberwell Grammarians

Junior Section

Ivanhoe
Hampton Scouts
Ormond
Alphington
West Brunswick
Old Scotch Collegians
M.H.S. Old Boys
Coburg.

North Reserve Section

Bellfield
Old Scotch Collegians
Kew
Old Melbournians
Ivanhoe
Old Xaverians
U.H.S. Old Boys
Parkside
Old Paradians

South Reserve Section

St. Kilda C.B.C. Old Boys
Ajax
Old Brighton Grammarians
State Savings Bank
St. Kevins Old Boys
F.T.S.O.B.
Ormond

Sunday Social Competition.

Dept. of Civil Aviation Football Club
Taxation Football Club
Centrax Football Club
C.S.I.R.O. Football Club
Dunlop Rubber Co. Football Club
Highbridge Social Football Club

Truth and Sportsman Football Club

Tramway Depot Football Club
T.T.A. Football Club
Geelong Firemen Football Club

Caulfield Grammar School

Scotch College)
Geelong College)
Geelong Grammar)
Xavier College) Junior Teams
Wesley College)
Brighton Grammar)
Carey Grammar)
Haileybury College)

Custom Department (2 teams)

Custom Agents
Herald and Sun
Taxation Central Office

Inter-Services Mid-week

South Suburbs Police
Northern Suburbs Police
Mobile Traffic Police
Point Cook
Laverton Red
Laverton Blue
Tottenham Air Force Base
Watsonia (3 teams)
Broadmeadows Camp

Southern Stars Football Club

Ivanhoe Football Club
South Richmond Football Club
Abbotsford
Abbotsford Brewery
Carlton Royals Football Club
South Kingsville Football Club
Park Colts Football Club

South Melbourne Colts

Abbotsford Brewery
Southern Stars
Carlton Royals
Postal Institute
South United
Happy Valley
Balaclava
Abbotsford

South Melbourne Y.C.W. Football Club.

Dandenong.
 Highett.
 East St. Kilda.
 Oakleigh.
 Malvern.
 East Bentleigh.

A.M.P. Football Club.

Brooklyn.
 Royal Exchange.
 Port City.
 College Lawn.
 Rings Rovers.
 Sheffield Colts.
 Esplanade Saints.

General Motors Football Club.

Balm Paints.

Brookland Social Club.

Singletons.
 Cottes.
 Lygon Social Club.
 Commonwealth Industrial Gases.
 Melford Motors.
 Reg Hunt Motors.

David Syme & Co. Social Club.

Coca Cola Bottlers.
 Ansett/A.N.A.

South Melbourne City Football Club.

Reservoir.
 Thornbury.
 East Coburg.
 Preston Wanderers.
 Deer Park.
 Merlynston.
 Alphington.

Menzies Football Club.

A.N.A.
 Chevron Hotel.
 Victoria Hotel.
 Australia Hotel.
 Foys.

Middle Park Y.C.W. Football Club.

Oakleigh.
 Brunswick.
 East Melbourne Hostel.
 Ashburton.
 Ascot Vale.
 East Brunswick.
 West Ivanhoe.

Standard Cars Social Football Club.

Canada Cycles Football Club.
 ABV2 Football Club.
 A.N.A. Football Club.
 Foys Football Club.
 Lygon Social Football Club.
 Sands & McDougall Football Club.
 V. Auto Chamber of Commerce Football Club.

South Melbourne Fourths.

Richmond.
 Melbourne.
 Hawthorn.
 Melbourne High School
 Collingwood Colts.
 Caulfield R.S.L.
 Preston Youth Club.
 Tally Ho Boys Home.

South Melbourne District Football Club.

East Hawthorn.
 East Brunswick.
 Richmond.
 Reservoir.
 Fairfield.
 Deer Park.
 Merlynston.
 Northcote Park.
 North Melbourne District.

A.B.C. Football Club.

Ansett/A.N.A.
 B.A.C.M.
 Foys.

Esplanade Saints.

Port City.
 Rings Rovers.
 Royal Exchange.
 Sheffield Colts.
 Brooklyn.
 College Lawns.

Postal Institute Football Club.

Balaclava.
 Abbotsford.
 Southern Stars.
 Brunswick United.
 South United.
 Happy Valley.
 South Richmond.
 South Kingsville.

SOCCER.State League.

Box Hill.
 George Cross.
 J.U.S.T.
 Juventus.
 Melbourne.
 Polonia.
 Moreland.
 Richmond.
 Slavia.
 Wilhemena.
 Footscray.

2nd Division.

Trident.
 Prahran.
 Rosebud.
 Moorabbin.
 Oakleigh.
 Makedonia.
 Essendon.
 Flinders Naval Depot.
 Bayswater.

1st Division - Reserves.

Footscray.
 Prahran.
 Moonee Ponds.
 Moorabbin.
 Coburg.
 Lions.
 Fiorenlina.
 Maccubi.
 Sunshine City.

Junior Teams.(i) Under 12 years League (2 teams)

Brooklyn Hostel.
 Essendon.
 Wilhelmina.
 Aspendale.
 Olympia.
 J.U.S.T.
 I.C.I.
 Sunshine City.
 St. Kilda.
 Springvale.

(ii) Under 14 years League

Wilhelmina.
 Frankston.
 Aspendale (two teams)
 Springvale.
 Noble Park Tech.
 Sandringham.
 Essendon (two teams)
 St. Kilda.
 Broadmeadows (two teams)
 Preston.
 J.U.S.T.

(iii) Under 16 years League (2 teams).

Brighton.
 St. Kilda.
 Springvale.
 Fawkiner.
 Wesley College.
 George Cross.
 Preston.

(iv) Under 18 years League.

Melbourne.
 H.A.S.K.
 Croydon.
 Ajax.
 Essendon.
 Trident.
 Box Hill.
 Sunshine.
 Wilhelmina.
 George Cross.
 Sunshine City.
 Sandringham.

CRICKET.St. Kilda Cricket Club 1sts and 2nds.

Richmond.
 Melbourne.
 Carlton.
 Footscray.
 Northcote.
 Collingwood.
 Prahran.
 Fitzroy.
 North Melbourne.
 University.
 Essendon.

St. Kilda Cricket Club 3rds.

Richmond.
 Melbourne.
 Old Melbournians.
 Old Xaverians.
 Caulfield Grammarians.
 Old Wesley.

South Melbourne A.N.A. Cricket Club.

Richmond Citizens Cricket Club.
 Prince Albert Cricket Club.
 Mitchelen Cricket Club.

Albert Park Cricket Club.

Adult Deaf Cricket Club.
 J.J.C. Eleven.
 Richmond Citizens Cricket Club.
 Richmond Opportunity Cricket Club.
 Prince Albert Cricket Club.

Court Clarendon Cricket Club

C.B.C. of Sydney Cricket Club.

South Melbourne Y.C.W. Old Boys.C.B.C. of Sydney Cricket Club.
Waterside Workers Federation Cricket Club.Cecil & Park St. Methodist Cricket Club.Melbourne Presbyterian Cricket Club.
Darling Road Methodist Cricket Club.
Carnegie Methodist Cricket Club.
Springvale Methodist Cricket Club.South Melbourne District Cricket Association.C.B.C. of Sydney Cricket Club.
Eastern Road Colts Cricket Club.
South Melbourne 5ths Cricket Club.
Waterside Workers Federation Cricket ClubSouth Melbourne Cricket Club.Northcote Cricket Club.
Collingwood Cricket Club.
Prahran Cricket Club.
North Melbourne Cricket Club.
Carlton Cricket Club.
University Cricket Club.
Essendon Cricket Club.
Fitzroy Cricket Club.
Richmond Cricket Club.
Melbourne Cricket Club
Hawthorn Cricket Club.
East Melbourne Cricket Club.
Footscray Cricket Club.
1sts, 2nds, 3rds and 4ths.Clarendon Cricket Club.C.B.C. of Sydney Cricket Club (two teams)
South Y.C.W. Cricket Club.Middle Park Cricket Club.North "B" Juniors.Royal Park.
Seddon.
Univic.
Regal.
South Yarra.
Myrall.North "A" Minor Division.Regal.
Myrall.
Royal Park
Brunswick United.
Melbourne City.
North Melbourne City.

LADIES CRICKET.Parkside Ladies Cricket Club.

Olympic.
 Semco.
 Melbourne.
 Caulfield Wanderers.
 Blue Socials.
 Doncx.

RUGBY.Kiwi Rugby Union Football Club.2nd Grade.

Box Hill.
 Army Apprentices.
 R.A.A.F. Academy.
 Harlequins.
 R.A.A.F. Fognall.
 Geelong.

3rd Grade.

Army Apprentices.
 Navy.
 Box Hill.
 Melbourne.
 R.A.A.F. Fognall.
 University.

St. Kilda Rugby Union Football Club.

Navy.
 Army.
 Old Scotch.
 University.
 Footscray.
 Melbourne Harlequins.

Power House Rugby Union Football Club

Army.
 Army Apprentices (two teams)
 Box Hill.
 Footscray.
 Harlequins.
 Melbourne.
 Navy.
 Old Scotch.
 R.A.A.F.
 Fognal.
 R.A.A.F. Technicians.
 University.

BASEBALL.St. Kilda & South Melbourne Baseball Clubs
1sts, 2nds and 3rds.

Prahran.
 Melbourne.
 Malvern.
 Caulfield.
 Ormond.
 Sandringham.
 Glenhuntly.
 University.

South Melbourne Fourths & under 16 teams.

Carlton.
 North Balwyn.
 Coburg.
 Newport.
 Collingwood.
 Caulfield.
 Prahran.
 Malvern.
 University (no under 16 team)
 Murrumbena (no fourths team)

HOCKEY.St. Kilda Hockey Club.

University.
 Old Scotch.
 Elsternwick.
 Camberwell.
 Essendon.
 Power House.
 Kew.
 Moorabbin.
 Toorak.
 Melbourne High School Old Boys.
 I.N.C.F.
 East Malvern.
 Fairfield.
 Army Apprentices.
 Mt. Waverley.
 Old Wesley.
 Flinders Naval Depot.
 Geelong.
 Croydon
 Old Melbournians.
 A.M.P. Society.
 Strathmore.
 Old Camberwell Grammarians.
 Dandenong.
 M.C.C.

LACROSSE.Melbourne Colts Lacrosse Club.

Caulfield.
 Chadstone.
 Clayton.
 Coburg.
 Malvern.
 Melbourne High School Old Boys.
 Salvation Army Boys Home.
 Surrey Park.
 Williamstown.

(Each team has under 14 and 18 Divisions).

IRISH ATHLETICS.

(Gaelic Football, Hurling Basketball)

Young Ireland.
 Eirns Owen.
 Carryowen.
 Sin Fein.
 St. Kevins.
 Sunshine Shamrocks.

LADIES BASKETBALL.

Junior Competition (all affiliated teams)

Bon Ami Youth League (four teams).
 Montague Y.M.C.A. (One team)
 Mentone Girls High School (three teams)
 Port Melbourne Y.M.C.A. (one team)
 Box Hill Girls Tech. School (one team)
 Lloyd Street State School (three teams)
 Brighton Y.M.C.A. (one team)
 Brighton Tech. School (one team).

Senior Competition (Y.W.C.A. teams)

Arnolds.
 Blues.
 Rockets.
 Royals.
 Greyhounds.
 Jets.
 Spartans.
 Cricketers.
 Anchors

(Affiliated teams)

Commonwealth Bank.
 Saints.
 Mentone Girls High School.
 Box Hill Tech. School (two teams)
 Wanderers.

SCHOOLS USING ALBERT PARK

Maulfield Grammar School.

MacRobertson Girls' School.

Lesley College.

Melbourne High School.

St. Vincent De Paul Orphanage.

St. Peter & St. Paul Orphanage.

Our Lady of Mt. Carmel.

Middle Park Christian Brothers' College.

South Melbourne Christian Brothers' College.

St. Kilda Christian Brothers' College.

South Melbourne Technical School.

South Melbourne Christian Brothers' Technical School.

Albert Park State School.

Eastern Road State School.

Middle Park State School.

Dorcas Street State School.

Middle Park Central School.

VIC. JOINT DEPT. LIBRARY
1 TREASURY PLACE

13.

VARIETIES OF SPORTS IN ALBERT PARK

Athletics.
Archery.
Baseball.
Basketball - Indoor and Outdoor.
Bowling.
Badminton.
Cricket.
Cycling.
Canoeing.
Fishing.
Football - Australian Rules; Irish.
Golf.
Gymnasium.
Hockey.
Hurling.
Lacrosse.
Model Aeroplane Flying.
Rugby.
Rowing.
Soccer.
Sailing.
Speed Boating.
Soft Ball.
Model Yachts.
Walking.
Table Tennis.
Tennis - Night and Day; (En-tout-cas and Asphalt).
Yachting.

ROWING CLUBS.

Albert Park Ladies Rowing Club.

Albert Park Rowing Club.

South Melbourne Rowing Club.

Caulfield Grammar.

SAILING CLUBS.

Albert Sailing Club.

Albert Park Yacht Club

Victorian Speed Boat Club.

OTHER BOAT CLUBS' HOUSES

Navy League.

Power House.

Sea Scouts.

Wesley College.

Young Women's Christian Association.

W. Hooper.

L. V. Mason.

C. Walsh.

D. Chandler.

HOCKEY CLUBS

St. Kilda Hockey Club.

Hakoah Hockey Club.

SPECIAL EVENTS IN ALBERT PARK

- Australia Day Rowing Regatta.
- Speed Boat Carnivals.
- Lions Club Fishing Contest.
- Rackberry Finn Contest.
- Holiday Play Centre.
- Archery Championships.
- Interstate Paraplegic Games.
- C.B.C. Race Around Lake.
- School Boys Cycling (Victorian and Australian Championship).
- Fireworks Display.
- Termination of Car Trials.
- Charity Carnival.

ASSOCIATIONS IN ALBERT PARK

Victorian Amateur Basketball Association.

Victorian Table Tennis Association.

Victorian Badminton Association.

Victorian Amateur Football Association.

Victorian Model Aeronautical Association.

Young Womens' Christian Association.

Squash Rackets Associations of Victoria.

CHARITY ORGANISATIONS.

Middle Park Old Buffers.

Childrens Hospital Appeal.

Lions Club of Richmond.

COMMERCIAL ORGANISATIONS IN ALBERT PARK BEFORE 1947

Chalet.

Defence Kiosk.

Golf Cafe.

Boat Hiring: Mason, Chandler, Hooper, Walsh.

GROUNDS ENCLOSED BEFORE 1947

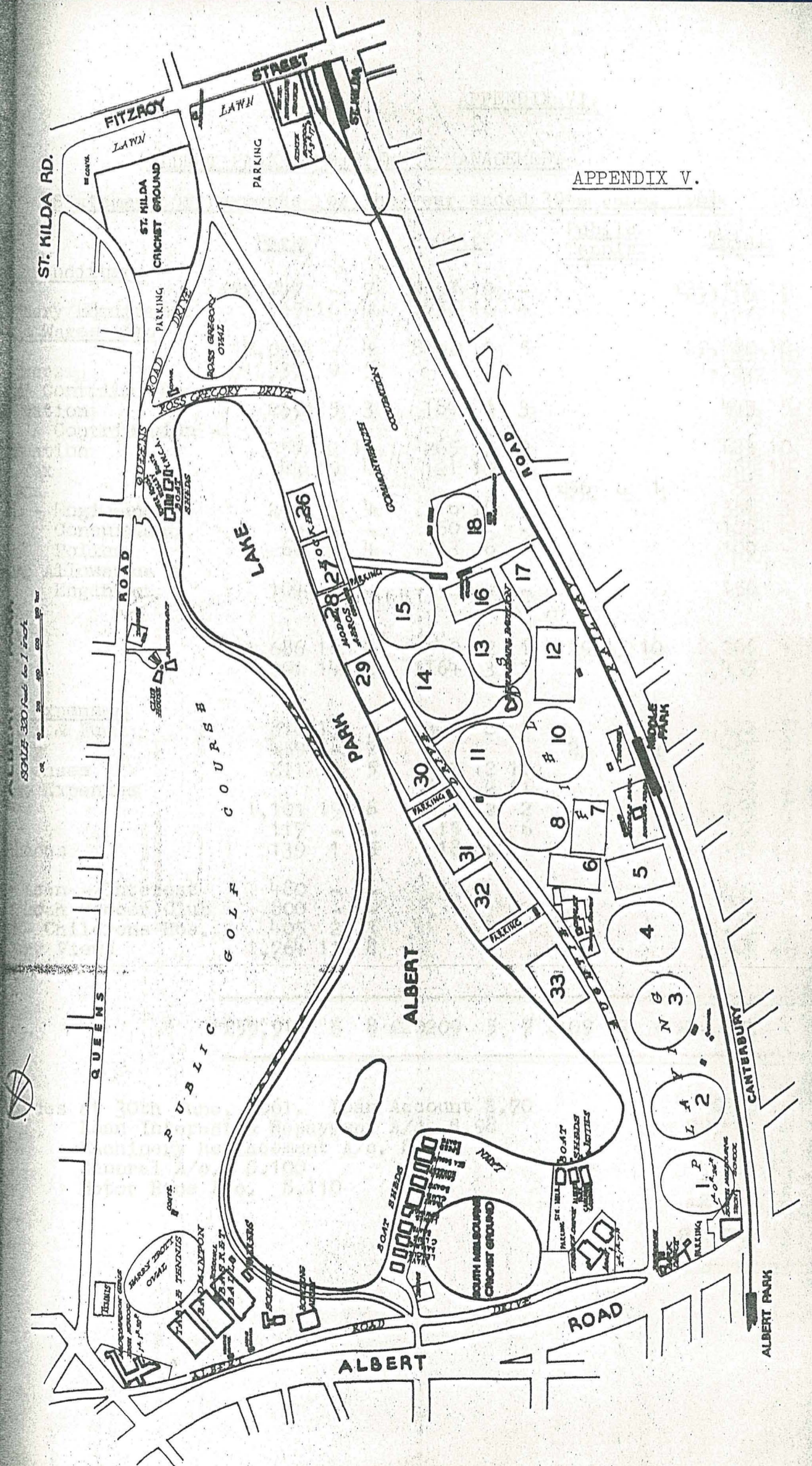
St. Kilda and South Melbourne Cricket Grounds.

Middle Park and St. Kilda Bowling Clubs.

Since 1947 the Cycle track was formed and partially enclosed; is now enclosed and used solely as a Soccer Ground.

Pipe and timber fences have been erected around the Harry Trott, Ross Gregory and Ovals 15, 14, 11, 10, 4, 3.

APPENDIX V.



APPENDIX VI.

ALBERT PARK COMMITTEE OF MANAGEMENT

Statement of Payments for the year ended 30th June, 1961

| | <u>Park</u> | <u>Golf</u> | <u>Public Tennis</u> | <u>Total</u> |
|-----------------------------------|--------------------------|-------------------------|--------------------------|------------------------|
| <u>Expenditure</u> | | | | |
| Machinery Equipment & Wages etc. | £29,747 - 7 965 16 4 | £5353 19 - 1751 16 4 | | £35,100 19 2,717 12 |
| Wages | 14,039 - 4 1,537 9 5 | 8841 10 5 | | 22,880 10 1,537 9 |
| Members' Contribution - Insurance | 259 5 3 | 184 0 3 | | 443 5 6 |
| Members' Contribution - Insurance | 357 12 10 | 265 17 2 | | 623 10 |
| Income Tax | 243 19 4 | 121 19 8 | | 365 19 |
| Grants | | | £56 6 1 | 56 6 |
| Motor Vehicle - Engineer | 241 13 4 | 116 10 - | | 358 3 |
| Motor Vehicle - Consultant | 75 - - | 50 - - | | 125 - |
| Police | 66 13 4 | 33 6 8 | | 100 - |
| Grants Allowance - Engineer | 104 - - | 52 - - | | 156 - |
| Grants | 1,686 16 4 4,291 14 2 | 549 12 1 1164 3 1 | 29 15 10 | 2,266 4 5,455 17 |
| <u>Other Expenses</u> | | | | |
| Oil & Fuel | 818 15 7 | 303 6 6 | | 1,122 2 |
| Electricity | 459 - 7 | | 23 7 2 | 482 7 |
| Repairs Expenses | 211 14 5 | 231 12 10 | | 443 7 |
| Postage Expenses | 1,101 19 6 | 607 2 11 | | 1,650 1 |
| Printing | 117 - - | 15 17 6 | | 132 17 |
| Various | 139 1 5 | 18 9 - | | 157 10 |
| Motor Vehicle Loan - Interest | 480 - - | | | 480 - |
| Wakoah Soccer Club | 800 - - | | | 800 - |
| Wakoah - Childrens Hos. | 405 2 3 | | | 405 2 |
| Park Views | 1,764 11 8 | | | 1,764 11 |
| | £59,913 6 8 | £20209 5 7 | £109 9 1 | £80,232 1 4 |

Balances at 30th June, 1961. Loan Account S.70
 Loan Interest & Repayment A/c. S.98
 Machinery Replacement A/c. S.99
 General A/c. S.100
 Motor Race A/c. S.110

£738 11 1
 29,480 2 4
 443 18 1
 533 16 6
 9,602 5 6

 £40,798 13 6

ALBERT PARK COMMITTEE OF MANAGEMENT

APPENDIX VI

Statement of Receipts for the year ended 30th June, 1961

| Items | Park | Golf | Public Tennis | Total |
|--------------------------------|--------|----------|---------------|----------------------|
| Melbourne Council | £3000 | - | - | £ 3000 |
| Ward Council | 1500 | - | - | 1500 |
| Wealth | 42743 | 15 | - | 42743 15 |
| at Grounds | 1698 | 5 | - | 1698 5 |
| all Grounds | 1732 | 13 | 5 | 1732 13 5 |
| g Green | 185 | - | - | 185 |
| Courts | 185 | - | - | 185 |
| ouse Sites | 416 | 15 | - | 416 15 |
| Golf Range | 556 | 13 | 4 | 556 13 4 |
| Tennis Centre | 1750 | - | - | 1750 |
| ton Centre | 1375 | - | - | 1375 |
| ball Centre | 2000 | - | - | 2000 |
| ball Caretaker | 156 | - | - | 156 |
| ion Dept. - Gym. | 1212 | 10 | - | 1212 10 |
| rofessional | | | 583 11 3 | 583 11 3 |
| estaurant | | | 2023 1 5 | 2023 1 5 |
| | 104 | - | - | 104 |
| e Kiosk | 159 | - | - | 159 |
| tand | 16 | 5 | - | 16 5 |
| Sports | 268 | 11 | - | 268 11 |
| | | | | |
| | 5735 | 19 | - | 5735 19 |
| Fees | | | 20472 2 - | 20472 2 |
| Fees | | | 72 3 - | 72 3 |
| Tennis | | | | |
| ment | | | 227 5 6 | 227 5 6 |
| Repayt. | 463 | - | - | 463 |
| Principal Interest | | | | |
| ball A. 1000 | - | - | 300 | - |
| ton A. 430 | - | - | 129 | - |
| Sail- | | | | |
| lub 100 | - | - | 49 | - |
| Boat Cb. 200 | - | - | 37 | - |
| Park | | | | |
| g Club | | | 42 | - |
| Park | | | | |
| Club 50 | - | - | 33 | 5 - |
| outs 50 | - | - | 25 | 14 6 |
| eld Gram. 500 | - | - | 377 | 5 5 |
| | 148 | 15 | - | |
| Melb. | | | | |
| g Club 50 | - | - | | |
| encing 100 | - | - | | |
| ost 149 | 7 2 | 29 17 5 | | |
| l 2778 | 2 2 | 1023 2 4 | 3801 4 6 | |
| Interest | 626 | 9 11 | | 626 9 11 |
| f Equipment | 62 | 9 6 | 108 10 - | 170 19 6 |
| on | 50 | - | - | 50 |
| rks Display (Nett) | 405 | 2 3 | | 405 2 3 |
| nce Recoups | 241 | 6 6 | 30 7 6 | 271 14 - |
| y Curator's Residence | 3500 | - | - | 3500 |
| Recoups | 464 | 13 7 | 67 10 6 | 532 4 1 |
| g Recoups | 575 | - | - | 575 |
| laneous | 80 | 8 11 | | 80 8 11 |
| f Views | 15 | 17 | - | 15 17 |
| | £75080 | 18 11 | £23357 5 8 | £227 5 6 £98665 10 1 |
| ance forward 1st July, 1960 | | | £22,365 4 9 | |
| ripts to 30th June, 1961 | | | 98,665 10 1 | |
| | | | 121,030 14 10 | |
| s Payments to 30th June, 1961 | | | 80,232 1 4 | |
| dit Balance at 30th June, 1961 | | | £40,798 13 6 | |

the amount of which shall not exceed six shillings, provided always that an additional charge not exceeding five shillings may be made in respect of any seat which is set apart as a reserved seat; and

- (c) the Committee may upon such terms and conditions as it thinks proper authorize in writing any person to refuse admittance to any other person to any of the buildings erected upon the reserve, except upon payment of an admission charge or fee the amount of which shall be determined by the Committee; and
- (d) the Committee may refuse admittance to any person to that portion or portions of the reserve set aside as a golf course, except upon payment of a green fee the amount of which shall be determined by the Committee.

4. No building shall be erected and no portion of the reserve shall be enclosed either wholly or substantially by a fence without the approval in writing of the Board of Land and Works, given only after expert advice has been received by it from a responsible authority constituted under the provisions of the Town and Country Planning Act 1958 as to the desirability or otherwise of the building or the enclosure as the case may be, provided that approval shall not be required for the erection by the Committee of any fence to define a sporting oval or to safeguard trees shrubs plants or any machinery or effects used in the maintenance and improvement work in the Reserve or to protect users of the reserve from flying golf balls, model aeroplanes or any other similar flying object, and provided further that approval shall not be required for the erection of any dressing shed or toilet reasonably required for the proper use and enjoyment of any sporting oval or golf course.

5. The Committee may enter into a contract or agreement with any person or association of persons, corporate or unincorporate, for the occupation by such person or the members of such association by way of licence only on such terms and conditions as the Committee thinks proper of any portion of the reserve not exceeding 12 acres in area but so as not to create a tenancy or any other tenure in the land

so occupied. If the Committee should agree to a period of occupancy for a term longer than twelve months, then the approval in writing of the Board of Land and Works must be first had and obtained before such agreement is valid and binding on the parties thereto. In any event an agreement for a term of occupancy for a period longer than twenty-one years shall not be approved.

The Committee may grant any permit or consent or ticket to any person to enter into and play golf or any other game referred to in such permit consent or ticket on any specified portion of the reserve on such terms and conditions and on the payment of such fees as may be set out in by-laws issued by the Committee for the regulation and control of such area. On default or breach of any such by-laws by such person the permit or consent given to him shall ipso facto determine and such person may be requested by any member of the Committee or any servant or officer employed by the Committee to leave such specified portion and in default of complying with such request immediately, such person shall be deemed to be in breach of these regulations.

- (a) Except by the consent in writing of the Committee first had and obtained, a commercial goods vehicle within the meaning of the Commercial Goods Vehicles Act 1958, whether carrying or transporting goods stores or material or not shall not be allowed within the reserve or to travel on the roadways therein.
- (b) A vehicle shall not travel or be allowed to enter on or pass over or through the reserve except on the portions thereof specifically appointed constructed or provided for vehicular traffic by the Committee or its servants or agents.
- (c) Except for the purposes of motor car or motor cycle racing, the Committee may at any time open or close any vehicular route on through or within the Reserve.
- (d) Notwithstanding anything herein contained, in the event of the Board of Land and Works permitting motor car or motor cycle racing as provided in these regulations, then the Committee may for such purpose close any vehicular route on through or within the Reserve.

No person shall enter or remain in the Reserve who may offend against decency as regards dress, language, or conduct nor shall any person behave in a disorderly manner or create or take part in any disturbance or use indecent or abusive language or commit any nuisance or in any way offend against decency in the Reserve or in the buildings or structures therein, and any person found in a state of intoxication or otherwise offending against this Regulation shall be liable to be forthwith removed from the Reserve and in addition, such person shall be liable to prosecution as hereinafter provided.

No person shall, without the consent of the Committee first obtained -

- (1) gather, pick up, cut, pluck, dig up, remove or have in his possession while in the Reserve or take away therefrom any live or dead timber or the whole or any part of any tree, bush, shrub, flower, grass, fern or other vegetation;
- (2) ring-bark or strip or remove bark from any tree, bush or shrub;
- (3) cut, dig, remove or have in his possession while in the Reserve or take away therefrom any sod, turf, loam, sand, gravel, stone or other substance or the whole or any part of any post or rail;
- (4) enter the Reserve for the purpose of cutting timber or damaging fencing in or around the same.

No person while in the Reserve shall -

- (1) remove or displace or damage in any way whatsoever the whole or any part of any notice or sign or of any board, tablet, plate or any support, fastening or fitting used or constructed or adapted to be used for the exhibition of any notice, sign or Regulations and fixed or set up by the Committee;
- (2) roll, throw or discharge or cause to be rolled, thrown or discharged any stone, brick or any other substance as a missile;
- (3) take or kill or use any trap or snare for the purpose of capturing any bird or animal, nor destroy or remove or interfere in any way whatsoever with any nest or eggs or any bird or animal;
- (4) climb or jump over any of the trees, gates, passageways, barriers, railings or fences in or around the Reserve;
- (5) paint, fix, write, cut, carve or in any way inscribe letters,

figures or marks upon or otherwise disfigure or remove or take away the whole or any part of any rock, tree, wall, seat or other improvement, building, property or structure therein, or any gate, passageway, barrier, railing or fencing or survey pegs or permanent marks in or around the Reserve;

-) post, stick, paint, print or otherwise affix or mark any advertisement, bill, placard or other notice therein or on any structure, erection, rock, tree, fence or anything in or around the Reserve;
-) spit or expectorate on the paths or on or in any structure of erection therein;
-) play any unlawful game or make any wager for money or by unseemly conduct interfere with the comfort or enjoyment of others therein;
-) camp therein;
-) wilfully obstruct or interrupt any servant or employee of the Committee in the proper execution of his work or duty.

person while in the Reserve shall without the consent in writing the Committee first obtained -

-) sell or offer for sale any article whatsoever, or distribute any bill or like thing, or place any chair or seat for hire;
-) use any building, house, booth, shed or any other structure therein;

erect or place therein any building, booth, shed, stand, screen, post, rail, fence, swing or seat or other erection or obstruction of any kind whatsoever, or in any way enclose any part thereof;

solicit or gather money or other thing;

take part in any public entertainment of any sort;

preach, declaim, harangue or deliver any address of any kind to members of the public;

carry, use or discharge any fireworks, firearms, airgun or other lethal weapon;

leave or deposit or cause to be left or deposited any glass, bottle, paper, fruit, peel, litter or rubbish or refuse of any kind, except in receptacles provided by the Committee for the

purpose.

No assemblies for sport, shows, fetes, holiday amusements, concerts, band performances, picnics or for the purposes of public worship or public speaking shall take place in any portion of the Reserve without the permission in writing of the Committee first had and obtained. Persons renting or hiring or permitted to use or occupy any stand, building, erection or enclosure on the Reserve or any portion thereof on the occasions of any sports, shows, fetes, holiday amusements, band performances, picnics or other gatherings may be required to pay to the Committee such fee as the Committee may determine and also to deposit any sum which the Committee may at any time determine not exceeding Twenty-five pounds, by way of guarantee that due care shall be taken of such stand, building erection or enclosure or of the Reserve or any portion thereof; and such Committee in its absolute discretion may make good any damage or injury sustained by such stand, building, erection or enclosure or by the Reserve or portion thereof during such occupancy, hiring, use or occupation, and deduct the cost of making good such damage or injury, and may also deduct the cost of cleaning up any rubbish or litter resulting from such occupation, hiring, use or occupation from the sum of money deposited by way of guarantee, and all persons so renting, hiring, using or occupying shall abide by these Regulations and by any order given by the Committee.

No person shall use any structure constituting a sanitary convenience or any part of the same for any purpose other than that for which the same was specially constructed.

A sum not exceeding six pence may be charged and taken by the Committee from every person for the use of special closets in connection with the sanitary conveniences provided in the Reserve. No male person, other than a boy under the age of six years, shall enter or use any playground, place, room or building set apart for the use of females, and no female person shall enter or use any place, room or building set apart for the use of males.

No person shall use or cause to be used any boatshed or any part thereof for other than boating purposes without the consent of the Committee first obtained.

No person shall bring into the Reserve or place upon the Lake therein any boat in respect of which permission or other authority in writing to bring into the Reserve or place on the Lake, has not been obtained from the Committee.

No person or persons shall row or handle any boat or craft on the Lake recklessly or in a manner likely to cause damage to any other boat or craft or to endanger the safety or comfort of any other person or to cause annoyance to any person on any other boat or on the banks of such Lake.

Without affecting the provisions of Regulation 4 above, no building fence, pier, jetty or any other erection shall be constructed in the Reserve or on the Lake until plans and specifications have been submitted to and approved by the Committee and written permission given by it for such construction.

The Committee shall be at liberty at any time to require any building, fence, pier, jetty or erection in the Reserve to be altered, renovated, repaired or removed by the person or association of persons corporate or unincorporate in occupation thereof, and no stakes or posts shall be driven into the bed of the Lake, and no fence, pier, jetty, building or other erection shall be altered or removed without the authority in writing of the Committee first obtained.

Subject to the provisions of Regulation 5 above, the Committee may withdraw, cancel or annul any permit or consent for the occupation of any site within the Reserve or for any special privilege in connection therewith granted subject to conditions, terms or the payment of fees whenever in the opinion of the Committee such conditions or terms have not been faithfully observed or the fees fixed by the Committee have not been paid or for any other reason which the Committee may deem to be in the best interests of the Reserve.

No person shall put or cause to be put on the Reserve any horses or any other animals except with the consent of the Committee.

No person shall break in or exercise any horse, pony or other animal in the Reserve and no person shall put or cause to be put on portion of the Reserve, other than roadways, any horses or other animals, without the consent in writing of the Committee.

No person shall ride any horse, pony or other animal on any portion of the Reserve other than the roadways.

No person shall park a motor car, cycle or other vehicle within the Reserve excepting at such place or places as are set apart by the Committee for that purpose, and every person entering or using any place so set apart for parking, shall obey any reasonable order given by the Committee or its servant or agent, and shall, on demand, pay a fee not exceeding four shillings per day for entrance or use by his vehicle of such parking areas.

Except on such occasions as motor car or motor cycle racing is permitted no person or persons shall ride or drive a bicycle, motor cycle, motor car or motor driven vehicle or any vehicle of any kind within the Reserve or in any parking area or along any vehicular route therein recklessly or at a speed exceeding 40 miles per hour or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of such vehicular route, parking area, or Reserve, and to the amount of traffic which actually is at the time or which might reasonably be expected to be on any such vehicular route, parking area or in the Reserve.

The Committee may at any time, by notice posted up, prohibit the taking of bicycles, motor cycles, motor cars or other vehicles into any portion or portions of the Reserve, and the owner or the user for the time being of any bicycle, motor cycle, motor car or other vehicle found in such portion or portions shall be guilty of an offence against these Regulations.

No person without the consent of the Committee shall -

- (1) ride or drive any animal or bicycle on any path or foot track in the Reserve;
- (2) ride or drive any motor cycle, motor car or other vehicle within

the Reserve except on the made vehicular routes therein, and the owner or the user for the time being of any motor cycle, motor car, or other vehicle found therein, except on any such vehicular route, shall be guilty of an offence against these Regulations.

No person shall, without the consent in writing of the Committee first had and obtained, do anything which may cause or be likely to cause damage by fire to the Reserve or anything therein.

The Committee may provide and build such fireplaces as it may think necessary, and any person lighting fires or using fires or causing or permitting fires to be used on the Reserve save in such fireplaces, except by special leave or direction of such Committee, shall be guilty of an offence under these Regulations.

No person, without the consent in writing of the Committee, shall -

(1) cause or suffer any dog belonging to him or in his charge to enter or remain in the Reserve unless such dog be or shall continue to be under proper control on a chain, cord or leash, and be effectually restrained from causing annoyance to any person or from worrying or disturbing any animals therein, and from entering any ornamental water or area enclosing a house or building;

(2) bring into the Reserve any dog for training or exercising for coursing or other purposes of sport or for bathing.

No person shall bring into the Reserve any greyhound or Alsatian dog unless such greyhound or Alsatian dog is properly muzzled and kept muzzled during the time it is on the Reserve.

No dog shall be allowed in the Reserve except as provided in these Regulations and any dog otherwise found therein or wandering thereon shall be dealt with in the manner provided in the Dog Act 1958 or any amendment thereof.

The Committee may at any time, by notice set up, prohibit the taking of a dog or dogs into any particular portion or portions of the Reserve.

The owner of any dog or other animal who permits or suffers such

dog or animal to be in the Reserve otherwise than in accordance with these Regulations shall, in addition to any other penalty, be liable to make compensation for any damage done by such animal to the Reserve or anything therein.

No person shall play or practise at any game of sport except and only in such area or areas as may from time to time be set apart by the Committee for any particular branch of sport, and then only with the permission of the Committee first obtained.

No person not being a player or official shall enter, cross or remain on any playing ground or course or pitch during any match, sports, games, golf or amusements, or during practice of any sport or game being played or carried on when such entry crossing or remaining thereon would be injurious to or an undue interference with the progress of the aforesaid match, sports, games, golf or amusements or the practice of the aforesaid sports or other games.

No person shall obstruct, interfere with or annoy any person who is taking part or has made preparation to take part in any game or sport or is lawfully present at any gathering for such purpose.

No person shall enter cross or remain upon any portion of the Reserve when to do so would be injurious to such portion as a sports area and when a notice is posted up to that effect at or near such portion of the Reserve.

No person, except a servant and agent employed by the Committee, shall enter any area enclosed for plantation of young trees or shrubs or for grass plots, nor shall any person, without lawful excuse, enter any enclosure or area wherein a house or equipment shed is located.

No person shall wilfully interfere with obstruct or damage any portion of the Reserve set apart and used as a golf course, nor shall any person damage or interfere in any way with the tees, greens, bunkers, mounds, or the approaches thereto or the sloping side thereof or the fairways, or any prepared portions of a golf course or any equipment or notices set up by the Committee for the use of golfers.

Except by permission of the Committee, no person shall enter on or

pass over any portion of a golf course in the Reserve designated as the tee, green, mound, bunker, or the approach thereto or the sloping sides thereof.

No person other than a person authorized to play golf on the Reserve shall pick up or remove any golf ball from the Reserve or any portion thereof.

No person shall behave in a disorderly or unruly manner on the golf course, and no person shall, by conduct, cause inconvenience or annoyance to any member of the Committee or any servant or agent of such Committee in control of the golf course of any part thereof.

No person shall offer for sale or buy any golf ball or any golf equipment in the Reserve without the consent, in writing, of the Committee first obtained.

No person shall coach or instruct any person in the playing of any game for a fee reward or consideration of any kind whatsoever without the consent, in writing, of the Committee first obtained.

No person shall offer for employment or be employed for a fee as a caddie unless with the permission of the Committee first obtained, and any such caddie shall abide by any directions given by the Committee as being reasonable and consistent with these Regulations, and no caddie of school age shall be eligible for employment on the Reserve during school hours on school days.

No person shall be permitted to play on any golf course on the Reserve until he has first paid the green fee fixed by the Committee in respect thereof, and any person found playing golf in contravention of this Regulation shall be liable, in addition to any penalty prescribed, to be refused by the Committee the privilege of playing on such golf course for such period as the Committee may determine.

No person shall play golf in the Reserve if, in the opinion of any officer of the Committee who for the time being is controlling the play, such person is not in full possession of sufficient and suitable equipment for the purpose or is not reasonably and decently dressed.

Any written permission granted or ticket or receipt issued in pursuance of these Regulations shall, if required, be produced at any time to any person duly authorised by the Committee to demand the production of same.

All tickets, permits, consents or the like issued by or on behalf of the Committee entitling holders thereof to engage in any game or sport or to enter or re-enter any portion set apart as provided in these Regulations and all pass-out or other checks shall be the property of the Committee and shall not be transferable, and no person shall, without the consent of the Committee, sell or offer to sell or buy or offer to buy any such ticket, permit, consent or the like or such pass-out or other check.

No person shall bathe in the Lake in the Reserve without the permission of the Committee.

No person shall use a trammel, trawl or other net in the Lake aforesaid.

Every person who shall commit a breach or fails to comply with any of these Regulations may be directed to forthwith leave the Reserve or any part thereof by any officer or servant of the Committee or by any member of the police force, and such person shall, in addition, be liable to prosecution as provided by law.

No person shall remain in the Reserve or in any part thereof at any time when lawfully directed by an officer or servant of the Committee or by any bailiff of Crown lands or any member of the police force to leave the same.

The words "sports", "holiday amusements" or "other gatherings" in the foregoing Regulations shall not be interpreted to include motor car or motor cycle racing.

Motor car or motor cycle racing in the Reserve shall not be permitted without the consent of the Board of Land and Works first had and obtained.

Without affecting the generality of the foregoing Regulations the Committee may, with the consent of the Board of Land and Works, but not otherwise, enclose with temporary fencing a portion or portions of the Reserve for the purpose of conducting such special functions

the Board may approve.

on the payment of a fee of 2/- in respect of each annual statement
any person may at any time demand in writing of the Committee a copy
any annual statement of receipts and expenditure and of the
balances in hand sent pursuant to section 222(1)(f) Land Act 1958
to the Secretary for Lands in respect of any financial year prior to
such demand and within seven days of the receipt of such demand
and appropriate fee or fees, the Committee by its secretary or
any other proper officer shall send a copy of such document or documents
by pre-paid post to the person demanding the same at the address
mentioned in such demand.

Every person who contravenes or fails to comply with these
regulations shall, in accordance with the provisions of section 218
of the Land Act 1958, for each offence be liable to a penalty of not
more than Five pounds, and every person who contravenes or fails to
comply with any such Regulation, and who, after he has been warned
by any bailiff of Crown lands or by any member of the Police Force,
does not desist therefrom, may be forthwith apprehended by such
bailiff or member of the Police Force and taken before some justice
to be dealt with according to law, and shall be liable to a penalty
of not more than Ten pounds. (Corres.Rs.3321).

